Supreme Court, U.S.
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No.

In the
Supreme Court of the United States

In the Matter of

KEVIN MICHAEL BRILL,

Petitioner.

Petition for Writ of Certiorari
to the Supreme Court of Illinois

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Once a United States Bankruptcy Court acquires jurisdiction of a core matter, does a state's attorney disciplinary commission have authority to adjudicate a core issue within the jurisdiction of the Bankruptcy Court?

2. In a series of attorney disciplinary cases, does a state's attorney disciplinary commission have authority to refuse to apply the doctrine of res judicata between the first case and the last case?

LISTING PURSUANT TO RULE 29.6

No corporations are involved.

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In the

SUPREME COURT OF THE UNITED STATES

In the Matter of

KEVIN MICHAEL BRILL,

Petitioner.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF ILLINOIS

Petitioner KEVIN MICHAEL BRILL respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of Illinois entered on May 18, 2007 in this case.

OPINIONS BELOW

The judgment of the Supreme Court of Illinois (App. 1) was not accompanied by an opinion. The Court adopted the recommendation of the Review Board of the Illinois Attorney Registration and Disciplinary Commission dated February 15, 2007 (App. 3) which had affirmed the Hearing Board's Report and Recommendation dated September 13, 2005 (App. 19).

STATEMENT OF JURISDICTION

The judgment of the Supreme Court of Illinois was entered on May 18, 2007. No request for reconsideration was made. The jurisdiction of this Court to review the judgment is invoked pursuant to 28 U.S.C. §1257.

STATUTORY PROVISIONS INVOLVED

The statutory provisions involved are 28 U.S.C. §§157(b)(1), 157(b)(2), 157(b)(2)(I), 157(b)(2)(J) and 1334(a). Those provisions state:

§157(b)(1): Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

§157(b)(2): Core proceedings include, but are not limited to –

§157(b)(2)(I): determinations as to the dischargeability of particular debts;

§157(b)(2)(J): objections to discharges

§1334(a): Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

STATEMENT OF THE CASE

On several occasions prior to 1995, the petitioner, Kevin Brill (hereinafter "Brill"), had represented Gloria Golden in a series of bankruptcy matters (App. 5), and by July 1995 she owed him several thousand dollars in fees. On July 6, 1995, according to Brill and his sister, Nancy Sandifur (but contrary to Ms. Golden's testimony), Ms. Golden came to Brill's office in Chicago and executed two promissory notes to pay Brill for legal services he had rendered (App. 48, 49). They authorized Brill to withdraw monies from the trust account which he held for Ms.

Golden. The Hearing Board and the Review Board found that they were forgeries, and the Illinois Supreme Court rendered its judgment, without opinion, agreeing with that conclusion (App. 1).

Sometime prior to 1998, Ms. Golden complained to the ARDC about Brill. The ARDC initiated an investigation, and in February 1998 Brill brought all of his files on Ms. Golden's matters to the ARDC's Investigating Officer, Mr. Cesario. Brill's uncontradicted testimony was that the notes were produced to Mr. Cesario. Mr. Cesario, 'though still employed by the ARDC, has never testified (App. 123)

In 2000 the Inquiry Board of the ARDC authorized a complaint[1] (Brill I; see fn. 1, below) which charged Brill with having converted funds belonging to Ms. Golden (App. 50). The action was identified as 00 CH 34, which became M.R. 18717 when Brill petitioned the Illinois Supreme Court following an unfavorable decision by the ARDC's Review Board (App. 59).

When Ms. Golden testified in Brill I, she stated that she had no fee agreement with Brill. Later, Brill attempted to refer to the promissory notes, which he took to the stand, but counsel for the ARDC objected. The ARDC's counsel advised the Chair that he had requested Brill's documents during discovery but he hadn't seen those which Brill was starting to refer to. Brill advised the Chair that he had produced them to Mr. Cesario prior to the complaint but did not produce them during discovery. Brill's counsel, Mr. Berkson, told the Chair that he was aware of the earlier production by Brill but that he (Mr. Berkson) had no part in that activity. He also stated that he had not seen the documents prior to the morning of the trial. The ARDC's counsel stated that he had not been a part of the earlier production, although he was aware that it had taken place, and that he did not know what was produced then. He asked the Chair to refuse to *admit* the documents because they had ***not been produced*** during discovery. The Chair excluded the documents which Brill held (App. 111 – 113).

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[1] As demonstrated by the complaint in Brill III (App. 50), there are three sets of proceedings to consider, Commission No. 00 CH 34 which was before the Illinois Supreme Court as M.R. 18717, Commission No. 03 CH 85 which was before the Illinois Supreme Court as M.R. 20757 and the present Commission No. 04 CH 79 which was before the Illinois Supreme Court as M.R. 21587. For convenience, they are referred to as "Brill I," "Brill II" and "Brill III," respectively.

The Hearing Board in Brill I issued its report and recommendation which concluded that Brill had converted $14,333.24 (App. 25).

Brill filed exceptions pro se, attaching one of the notes to his opening brief to the Review Board and the other to his reply brief (App. 26). He argued, *inter alia*, that he was authorized by the terms of the notes to withdraw the funds from his trust account to apply to his fees, and that they had been improperly excluded. He urged that the case be returned to the Hearing Board to consider the notes. Oral argument to the Review Board took place on November 8, 2002 (App. 109). Brill's counsel asked the Review Board to return the case to the Hearing Board because the notes had been produced to the ARDC in the person of Mr. Cesario. He pointed to an Administrator's Exhibit with Ms. Golden's signature on it and to the signatures on the notes, saying that the signatures on the notes appeared to be authentic but that the Hearing Board could make that determination (App. 112, 114).

The Review Board, in its report and recommendation, did not return the case to the Hearing Board and affirmed the Hearing Board's expressed conclusions (App 26).

The Illinois Supreme Court denied Brill's petition for leave to file exceptions. The Court's judgment dated

September 19, 2003 (App. 59) affirmed the report and recommendations of the Review Board and the Hearing Board that Brill be suspended from the practice of law for eighteen months and until he paid Ms. Golden the $14.333.24 . The notes were not mentioned in the judgment, although they were discussed extensively in Brill's petition and in the ARDC's response.

In April 2004 Brill filed a complaint against Ms. Golden in the Circuit Court for the 18th Judicial Circuit of Illinois in Wheaton, Illinois (App. 100; hereinafter, "the Circuit Court") claiming the fees which she owed him evidenced by the notes. He attached the notes to the complaint. The stated amount due was $57,445.02. Ms. Golden was served (App. 98) but did not appear, either in person or by an attorney, and made no response to the complaint or to the attached notes (App. 82, 95).

In about May 2004, Ms. Golden applied to the ARDC's Client Protection Fund for payment of the $14,333.24 found in Brill I. On or about May 12, the Client Protection Fund paid her $12,628.00 by a check sent to her home in Flint, Michigan, and on May 19 Brill sent her a second check for $1,705.24 (App. 94, 95).

Due to Ms. Golden's non-appearance in the Circuit Court, a default became imminent. On June 14, 2005, through a bankruptcy attorney in Michigan, Ms. Golden filed a voluntary petition in bankruptcy under the name of Glorious S. Greer-Tucker. The petition was denominated #04-32501 in the United States Bankruptcy Court for the Eastern District of Michigan (Flint). Brill was listed as a creditor for $57,445.02 (App. 95), the amount stated in the Circuit Court complaint (App. 102). She did not declare the payments which she had received from the Client Protection Fund and Brill (App. 95, 96).

After the payment was made to Ms. Golden and Brill had reimbursed the Client Protection Fund, Brill petitioned the Illinois Supreme Court for reinstatement. The ARDC opposed his reinstatement, alleging in the Commission's initial memorandum (App. 63) that the promissory notes at issue in Brill I, and which Brill had attached to his complaint, were forgeries. The ARDC advised the Illinois Supreme Court that the Commission had submitted the notes to a forensic documents examiner who had concluded that the notes were fake. Only a few days later, however, the ARDC filed a motion asking leave to file an amended memorandum (App. 63). The ARDC still opposed Brill's reinstatement, but they withdrew the forensic document examiner's first-reported opinion. The Illinois Supreme Court was advised that the document examiner was now unable to say that the notes were not genuine. Brill was thereafter reinstated.

The filing of Ms. Golden's petition in the Bankruptcy Court stayed proceedings in Brill's action in the Circuit Court. In order to preserve his claim for his fees, Brill was required to proceed in the Bankruptcy Court. He did so by filing his Adversary Complaint there, initiating a proceeding before the Bankruptcy Judge who had Ms. Golden's case. It was numbered #04-3153 in the Bankruptcy Court (App.73). Ms. Golden, her attorney and the Bankruptcy Trustee were served (App. 75, 86).

Brill appeared before the Bankruptcy Judge on January 19, 2005, describing his case extensively and submitting exhibits, among which were the promissory notes, Ms. Golden's schedules listing him as a creditor, his Circuit Court complaint and the checks from himself and the Client Protection Fund to Ms. Golden (App. 77). Neither Ms. Golden nor her attorney appeared at the hearing.

The Bankruptcy Judge agreed that Brill had standing in the Adversary Proceeding (App. 96). After receiving and reviewing the exhibits, he granted Brill's request for a judgment denying Ms. Golden a discharge in the bankruptcy (App. 95). There is no evidence of any subsequent proceeding in the bankruptcy.

Throughout the Summer of 2004, while the complaint in Brill III was pending, the ARDC pursued its efforts to get a conclusion from its forensic documents expert connecting the notes to Brill. Each item of the correspondence between the ARDC and their expert was marked as a Brill exhibit at the Hearing of Brill III, but only two were admitted (App. 21). The expert herself was removed by the ARDC from their witness list (App. 33), and she never testified. The ARDC's counsel advised the Hearing Board that the expert was unable to reach a conclusion, even though she was given samples of Ms. Golden's handwriting which the ARDC said was genuine and samples of Brill's handwriting obtained from Ms. Golden (App. 69).

Brill moved to dismiss the Complaint in Brill III because the Bankruptcy Court had acquired original and exclusive jurisdiction of the debt to Brill which Ms. Golden had listed as "disputed" (App. 21).

Brill also moved to dismiss the Complaint in Brill III because the issue of forgery of the notes was before the ARDC and the Supreme Court of Illinois prior to the Court's judgment in Brill I. Both the Review Board and the Supreme Court of Illinois were asked in 00 CH 34 and M.R. 18717 to send the issue of the notes' authenticity to the Hearing Board (App. 26, 109, 122). That was not done, and the matter became res judicata when the judgment in Brill I was entered.

Both of the above motions were denied, and the hearing proceeded before the ARDC's Hearing Board on February 24, 2005. Brill testified that Ms. Golden had come to his office on July 6, 1995 to discuss the fees which she owed. He testified that at that time she had signed the promissory notes which are at issue (App.32). Ms. Golden testified that she was not in Chicago that day and that she did not sign the notes (App. 29). She agreed that she had seen the papers in the Circuit Court suit a year ago (App 29). She denied signing any of the documents concerning matters handled by Brill which she was shown (App. 29). She admitted filing the bankruptcy papers which she was shown, and she admitted having received the monies from the Client Protection Fund and Brill shortly before and shortly after filing the bankruptcy in Michigan (App. 30, 94,95). Nancy Sandifur, Brill's sister, testified that the lady whom she saw in the washroom the day of the hearing was the woman she saw in Brill's office in July 1995 signing papers (App 31).

The Brill III Hearing Board concluded that Brill's prior statements (which were also quoted to the Review Board by the ARDC in Brill I) "establish overwhelmingly" that he forged the notes (App. 36), noting that the Panel was "not required to put much weight on the testimony that occurred at the hearing" (App. 37), and recommended that Brill be disbarred.

The Brill III Review Board dismissed the supremacy of the Bankruptcy Act (App. 10) in a paragraph and dismissed Brill's res judicata defense in the same manner (App. 11). The Board followed the Hearing Board's rejection of Brill's testimony and that of his sister, concluding that the Hearing Board's reliance upon the prior inconsistent statements by Brill should outweigh Brill's testimony and his sister's that Ms. Golden had come to Brill's office and signed the notes.

The Supreme Court of Illinois denied Brill's petition for leave to file exceptions (App. 1). That petition urged both grounds, namely, the ARDC's lack of jurisdiction because of the supremacy of the Bankruptcy Act and res judicata resulting from the previous challenges concerning the authenticity of the promissory notes in Brill I (App. 62). The Court adopted the Review Board's recommendation and adjudged that Brill was disbarred (App. 1).

REASONS FOR GRANTING THE WRIT

I. THE ARDC HAD NO JURSDICTION TO TRY THE AUTHENTICITY OF THE NOTES IN 04 CH 79

Brill did not invoke the Bankruptcy Court's jurisdiction. Ms. Golden did. His complaint in DuPage was premised on the debt evidenced by the notes, which were attached to the DuPage complaint. By listing the amount of Brill's claim spelled out in the DuPage action as "disputed," Ms. Golden put that claim in issue in the Bankruptcy Court. The Bankruptcy Court had the exclusive power to determine the claim according to the rest of the obligations which Ms. Golden listed. Neither the Supreme Court of Illinois nor the ARDC had jurisdiction over that claim once Ms. Golden put it in the hands of the Bankruptcy Court.

Once jurisdiction was transferred to the Bankruptcy Court, that was where Brill had to go to pursue his claim. The location of the Bankruptcy Court was in Flint, Michigan, where Ms. Golden lived. In September, 2004 Brill filed his Adversary Complaint there (App. 74). Ms. Golden was served, her bankruptcy attorney who filed her petition was served, and the Trustee was served (App 74, 86). Ms. Golden did not appear personally or by her attorney and defaulted (App. 75, 93).

Brill asked the Bankruptcy Court for a default judgment, and a hearing was held on January 19, 2005 for prove-up. The entire transcript of that hearing including a list and description of the exhibits, is reproduced at App. 77 et seq. The ARDC's Client Protection Fund check and Brill's supplemental check were included. The record shows that the Bankruptcy Judge asked to review the exhibits, and that he did (App. 88). Following that review, when Brill requested findings, including a finding that he had proven standing to make a claim, the Court replied "...I'm saying, you have" (App. 91). A few days later, acting on the evidence presented, the Court granted a default judgment denying Ms. Golden a discharge (App. 93).

There has been no further activity in the Bankruptcy Court.

The Bankruptcy Court acted on the evidence it had and the representations made. Ms. Golden had full opportunity to appear in a court of her own choosing. The determination and the judgment were the Bankruptcy Court's alone to make.

The ARDC Review Board's report hardly touches on the evidence, and does not mention 28 U.S.C. §1334 (App. 3 et seq.) which gives the Bankruptcy Court "original and exclusive jurisdiction" (quoted above at page 2). And its statement that "[t]he Hearing Board made no finding regarding the validity of Respondent's claim in Golden's bankruptcy proceeding" (App. 10) flies in the face of the Bankruptcy Court's finding that Brill had proven standing, and the foundation of its judgment refusing to give Ms. Golden a discharge.

The ARDC Review Board's report fails to cite any applicable authority. In re Ettinger, 128 Ill. 2d 351, 538 N.E. 2d 152 (1989), a case cited for the proposition that "Our supreme court bears sole responsibility for disciplining attorneys licensed in this state" (App. 11), has nothing to do with the Bankruptcy Act. It deals with whether testimony given in a Federal court may be used in an ARDC proceeding. In re Mitan, 75 Ill 2d 118, 387 N.E. 2d 278 (1979), also cited in the same paragraph as Ettinger, has nothing to do with the Bankruptcy Act either.

On the contrary, and very much on point, is Kalb v. Feuerstein, 308 U.S. 433, 60 S. Ct. 343 (1940). Acting under the state law of Wisconsin, a state court forclosed upon a farm and dispossessed the owners while they had a properly pending action in the Bankruptcy Court under the Bankruptcy Act. The United States Supreme Court reversed the judgments, saying at 308 U.S. 439:

> The Constitution grants Congress exclusive power to regulate bankruptcy and under this power Congress can limit the jurisdiction which courts, state or federal, can exercise over the person and property of a debtor who duly invokes the bankruptcy law."

Illinois courts today are following the rule of Kalb when there is an apparent clash between state law and the Bankruptcy Act. The Second District ruled, in Townsend v. Magic Graphics, Inc., 169 Ill. App. 3d 73, 76, 523 N.E. 2d 208, 119 Ill. Dec. 740 (1988), that "[i]t has therefore been recognized that State court proceedings must abate immediately upon the filing of the bankruptcy petition.....Default judgments entered in violation of the automatic stay are void and without effect." The First District has ruled similarly in Cohen v. Salata, 303 Ill. App. 3d 1060, 1064, 709 N.E. 2d 668, 237 Ill. Dec. 413 (1999), citing Kalb.

The only court with jurisdiction to assess the authenticity of the notes and act upon them was the Bankruptcy Court in Michigan. It did so when it concluded that Brill had unopposed standing in that Court and when it acted on Brill's Adversary Complaint by refusing to give Ms. Golden a discharge. The ARDC had to relinquish its authority and could not retry the issue. The Review Board's conclusion on this point that it had jurisdiction, and the judgment of the Illinois Supreme Court grounded on such assumed jurisdiction, must be set aside.

II. THE ARDC WAS BARRED BY RES JUDICATA FROM TRYING THE AUTHENTICITY OF THE NOTES

A. Background

In Brill I, a major part of the argument before the Review Board was whether to send the case back to the Hearing Board to determine whether Ms. Golden's notes were genuine. The transcript of that argument begins at App. 109. For example, Mr. Splitt who argued for the Administrator, said at App. 115: "The Hearing Board Chair did not have to go past that to say what I think was probably going through everybody's mind at that time, which was that this is a phonied-up document." Chairman Quinn (of the Review Board panel) noted in the same exchange: "Experienced counsel is now in the case, and he's asking that the matter be remanded to determine the authenticity of this document" (App. 116). However, the case didn't go back.

The Report and Recommendation of the Review Board was submitted to the Illinois Supreme Court. Brill's first Question Presented was:

> "Should the Review Board have approved the Hearing Board's Decision to exclude documents signed by the complaining witness which the Administrator has since admitted 'go to the heart of Mr. Brill's case'... without any investigation of whether the documents are genuine and true.....?" (Petition for Leave to File Exceptions to a Report and Recommendation of the Review Board of the Illinois Attorney Registration and Disciplinary Commission dated March 20, 2003, at page 3)

Judgment was rendered by the Court on the reports and recommendations by the ARDC boards. Brill was suspended. The judgment, dated September 19, 2003, in case Number M.R. 18717 appears at App. 59.

A few months later Brill moved in M.R. 18717 for leave to file a Rule 764 certification in order to be reinstated, and the Administrator objected. In the objection, filed July 1, 2004, the ARDC asserted: "The Administrator has caused the promissory notes to be examined by a handwriting expert, who has offered the opinion that Ms. Golden did not execute the promissory notes." However, a week later the ARDC asked for leave to file an amended response to Brill's request for certification (see, App. 63, Appendix items 10 and 11). The circumstances of consulting the handwriting expert were disclosed, and it was revealed that the expert "was no longer able to provide a definitive opinion as to whether or not the signatures of Gloria Golden on the note were genuine.".

B. Argument

The Review Board in the present proceeding, 04 CH 79, looked no further than the Hearing Board report in 00 CH 34 in rejecting Brill's claim of res judicata (App. 11). Brill tried to refer to those notes when he started to testify, but they were excluded. In fact, they were in the case: as set forth above, their authenticity was expressly involved through the Review Board level and then, repeatedly, in the Illinois Supreme Court. It is totally incorrect to suggest that the notes were not actually at issue in Brill I.

In both Loew v. A&B Freight Line, Inc., 175 Ill. 2d 176, 186 (1997) and DeLuna v. Treister, 185 Ill. 2d 565, 574 (1999) the Illinois Supreme Court affirmed the viability of the res judicata doctrine in civil cases, and did so as well in a criminal case, People v. Del Vecchio, 129 Ill. 2d 265, 544 N.E. 2d 312, 135 Ill. Dec. 816 (1989). No one disagrees with the principle that the Review Board derived from Simcox v. Simcox, 131 Ill. 2d 491, 497, 546 N.E. 2d 609, 137 Ill. Dec. 664 (1989), namely that there be (1) a final judgment on the merits rendered by a court of competent jurisdiction, (2) an identity of cause of action, and (3) an identity of parties or their privies. In these two cases, 00 CH 34 and 04 CH 79, it was the ARDC vs. Brill. The notes with Ms. Golden's signature were at issue, and the ARDC Board and the Illinois Supreme Court were the entities involved. The persona immediately involved, except for the first trial, were the same counsel, driven by the same purposes. The authenticity of the notes was the main issue, and it remained so throughout all of these proceedings.

The rules of res judicata and finality of judgments should apply. The Review Board erroneously tried to cut the issue off by looking only at the Hearing Board recommendation in Brill I. The Review Board's conclusion that the present matter, Brill III, is not barred by res judicata is in error, and the Illinois Supreme Court's judgment based upon it should be reversed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

STATE OF ILLINOIS
SUPREME COURT

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the fourteenth day of May, 2007.

Present: Robert R. Thomas, Chief Justice
Justice Charles E. Freeman
Justice Thomas R. Fitzgerald
Justice Thomas L. Kilbride
Justice Rita B. Garman
Justice Lloyd A. Karmeier
Justice Anne M. Burke

On the eighteenth day of May, 2007, the Supreme Court entered the following judgment:

In re: M.R.21587

Kevin Michael Brill
4520 Washington Street
Downers Grove, IL 60515-2833

Attorney
Registration and
Disciplinary
Commission 04CH79

The petition by respondent Kevin Michael Brill for leave to file exceptions to the report and recommendation of the Review Board is denied. Respondent is disbarred, as recommended by the Review Board.

Order entered by the Court.

As Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, I certify that the foregoing is a true copy of the final order entered in this case.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court, this eighteenth day of May, 2007.

/s/_________________________________

Clerk, Supreme Court of the State of Illinois

In re Kevin Michael Brill
Respondent-Appellant
Commission No. 04 CH 79
Synopsis of Review Board Report and Recommendation
(February 2007)

The Administrator filed a three-count complaint against Brill, charging him with making false statements and creating and offering false evidence in two attorney disciplinary matters, and forgery and creation of false evidence in a civil matter.

The Hearing Board found that Brill committed all of the charged misconduct and recommended disbarment.

Brill filed a notice of exceptions and argued before the Review Board that (1) the Hearing Board lacked subject matter jurisdiction over the issue of the genuineness of the allegedly forged promissory notes, (2) the issues raised in the disciplinary proceeding were barred by res judicata, and (3) the Hearing Board's findings of misconduct were against the manifest weight of the evidence. As part of his challenge to the sufficiency of the evidence, Brill contended that the Administrator was required to present the testimony of a handwriting expert to prove forgery.

The Review Board determined that the Hearing Board had jurisdiction to determine for disciplinary purposes whether Brill forged the promissory notes, and that its determination did not infringe upon the jurisdiction of the bankruptcy court. The Review Board rejected Brill's res judicata argument, and also determined that the findings of misconduct were amply supported by the evidence. The Review Board concluded that circumstantial evidence can be enough to prove forgery by clear and convincing evidence, and that the Administrator successfully did so in this case.

The Review Board recommended that Brill be disbarred.

BEFORE THE REVIEW BOARD OF THE ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION

FILED
FEB 15 2007
ATTY REG & DISC COMM
CHICAGO

In the Matter of:

KEVIN MICHAEL BRILL, Commission No. 04 CH 79

Respondent-Appellant,

No. 6182552.

REPORT AND RECOMMENDATION OF THE REVIEW BOARD

In a three-count complaint, the Administrator-Appellee charged Respondent-Appellant, Kevin Michael Brill, with making false statements and creating and offering false evidence in two disciplinary proceedings and a civil lawsuit.

Following a hearing, the Hearing Board found respondent guilty of all of the charged misconduct, which included forgery; filing a suit when he knew or reasonably should have known that it would serve merely to harass or maliciously injure another in violation of Illinois Rule of Professional Conduct 1.2(f)(1); advancing a claim he knew was unwarranted under existing law in violation of Rule 1.2(f)(2); making a statement of material fact to a tribunal which he knew or reasonably should have known was false in violation of Rule 3.3(a)(1); offering evidence he knew to be false in appearing in a professional capacity before a tribunal in violation of Rule 3.3(a)(4); participating in the creation of false evidence in appearing in a professional capacity before a tribunal in violation of Rule 3.3(a)(5); making a statement of material fact he knew to be false, in connection with a lawyer disciplinary matter, in violation of Rule 8.1(a)(1); engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, in violation of Rule 8.4(a)(4); engaging in conduct that is prejudicial to the administration of justice in violation of Rule 8.4(a)(5); and engaging in conduct which tends to defeat the administration of justice or to bring the courts or the legal profession into disrepute, in violation of Supreme Court Rule 770. The Hearing Board recommended that Respondent be disbarred.

Respondent filed exceptions and raises eighteen issues on review. For the reasons set forth in detail below, we will review Respondent's arguments that (1) the ARDC lacks subject matter jurisdiction over this matter, (2) this matter is barred by res judicata, and (3) the Hearing Board's findings are against the manifest weight of the evidence. We will not review Respondent's remaining arguments.

FACTS

Between 1992 and 1995, Respondent represented Gloria Golden, now known as Glourious Swanson Greer-Tucker (Golden), on several bankruptcy petitions. In August 2000, the Administrator charged Respondent with converting over $14,000 in escrow funds that he was supposed to be holding for Golden in his client trust account. See In re Brill, No. 00 CH 34 (Hearing Board, Feb. 26. 2002). Both before and after the Administrator filed the complaint in No. 00 CH 34, Respondent stated under oath that Golden had not authorized him to disburse any of the escrow funds. Respondent testified at a hearing on October 2, 2001, that he did not have anything in writing from Golden that authorized him to use the escrow funds to pay his attorney fees. Following the hearing, the Hearing Board found that Respondent had committed conversion and recommended an 18-month suspension. Brill, No. 00 CH 34 (Hearing Board, Feb. 26. 2002).

Respondent filed exceptions to the Hearing Board's Report and Recommendation. In a pro se brief he filed with the Review Board on July 8, 2002, Respondent attached as an exhibit a copy .of a promissory note dated July 6, 1995 (First Promissory Note). The note contains Golden's purported signature and states that Golden agreed to pay Respondent $14,192.25, plus interest, in monthly installments of $300. The promissory note also authorizes Respondent to withdraw $10,733.25 of the escrow funds to pay Golden's attorney fees.

On July 18, 2002, Respondent filed a motion with the Illinois Supreme Court seeking to vacate an order suspending him on an interim basis. Respondent attached the First Promissory Note to his motion, and also attached a Second Promissory Note, which was dated July 6, 1995. The Second Promissory Note, also purportedly signed by Golden, states that Golden agrees to pay Respondent $1205 plus interest in $300 monthly installments. It authorizes Respondent to take $3750 of Golden's escrow funds. Later, Respondent attached the Second Promissory Note as an exhibit to his reply brief filed with the Review Board. He also attached the promissory notes to his petition to the supreme court for leave to file exceptions to the Review Board's Report and Recommendation. Ultimately, the supreme court suspended Respondent for 18 months. In re Brill, No. M.R. 18717 (Sept. 19, 2003).

In August 2003, the Administrator filed charges against Respondent in Case No. 03 CH 85, alleging that he practiced law while his suspension was in effect. At the hearing in that matter, Respondent offered the promissory notes into evidence and testified to their authenticity. The Hearing Board found that Respondent had neglected a client's case, engaged in the unauthorized practice of law and failed to comply with the Administrator's requests for information. In re Brill, No. 03 CH 85 (Hearing Board, Dec. 8, 2004). He received a suspension of 30 months and until further order of the court. In re Brill, petition for leave to file exceptions denied, No. M.R. 20757 (May 16, 2006).

In April 2004, Respondent filed a civil suit against Golden in Du Page County, alleging that Golden had executed the promissory notes and, therefore, owed him $57,445.02 in principal and interest. The promissory notes were attached to the complaint.

At the hearing in the instant matter, Ms. Golden testified that she did not authorize Respondent to use any of the escrow funds and did not sign the First or Second Promissory Note. She further testified that she was in Mississippi on July 6, 1995, the date written on the promissory notes. In addition, Golden stated that she did not remember signing several other documents that Respondent's counsel showed to her, and that she was not sure if the signatures thereon were hers.

Golden stated that she had not seen a copy of Respondent's complaint against her prior to the hearing. She had been served with papers and recognized the amount Respondent alleged that she owed him. Golden stated that she included the alleged debt to Respondent on a 2004 bankruptcy petition filed in Michigan because her attorney advised her to do so: On the bankruptcy petition, she checked the box indicating that the amount was disputed.

Dennis Berkson testified that he represented Respondent in Case No. 00 CH 34. He stated that during those proceedings Respondent never provided him with any documents indicating that Golden had allowed him to use her escrow funds or showing the amount of fees that Golden owed. Berkson testified that it was his understanding that Respondent submitted documents to the ARDC in 1998, but he did not represent Respondent at that time and did not know what documents Respondent provided.

Respondent called his sister, Nancy Beth Sandefur, as a witness. She testified that she was at Respondent's office on or about July 6, 1995, and saw an African-American woman there signing papers. She said that she recalled her father, who shared an office with Respondent, saying that the woman's name was Gloria Golden. Sandefur testified that she saw the same woman at Respondent's hearing. On cross-examination, Sandefur testified that in 1995 she only saw the woman from the back, but that she looked similar to the woman she saw at the hearing.

Respondent testified that he asked Golden to sign the First and Second Promissory Notes in July 1995, and recommended that she obtain independent legal advice about entering into such an agreement with him. Respondent testified that Golden came to his office and signed the notes. He gave her two detailed statements of his services and went over them with her and also gave her copies of the signed notes. Respondent had in Golden's file a mock promissory note bearing what purported to be Golden's signature. Respondent testified that someone else signed Golden's name, but he does not know who did so.

Respondent was asked to give a sworn statement to the ARDC in February 1998 in response to a complaint filed by Golden. Respondent testified that he brought the promissory notes to the sworn statement. According to Respondent, there was a discussion about the promissory notes off the record. Respondent stated that he was not allowed to mention the notes during his depositions or the hearing in

Case No. 00 CH 34. According to Respondent, the promissory notes were offered into evidence in that matter but were excluded for failure to timely produce them. They were not on Respondent's exhibit list, and he made no record that they had been offered for submission into evidence.

The Administrator did not offer any expert handwriting testimony in the instant matter. Respondent testified that counsel for the Administrator had informed him that he had a handwriting expert, but the expert was later withdrawn because she could not offer an opinion.

Respondent offered no evidence in mitigation. In aggravation, the Administrator submitted evidence that Respondent had been censured in 1988 for neglecting eight cases, and suspended for eighteen months in 2003 for converting Golden's funds. The Administrator also presented evidence that Respondent had filed a complaint in Golden's Michigan bankruptcy proceeding objecting to her discharge in bankruptcy on the ground that she owed him $57,445.02 in fees. Respondent accused Golden of lying to the bankruptcy court by failing to list on her bankruptcy petition approximately $14,300 in funds she had received from the ARDC Client Protection Fund.

The Hearing Board found that the evidence "overwhelmingly" established that Respondent forged Golden's signatures on the two promissory notes. The Hearing Board found credible Golden's testimony that she did not sign the notes, and found the testimony of Respondent and his sister to be "highly incredible."

ANALYSIS

We begin by noting that Respondent lists eighteen issues presented for review, yet fails to properly brief most of these issues. Rule 302(f)(5) of the Rules of the Attorney

Registration and Disciplinary Commission requires the appellant to set forth in his or her argument "the contentions of the party and the reasons therefor, with citation of the authorities and the pages of the record relied on." ARDC Rule 302(i) provides that the Review Board may, among other things, refuse to review arguments not supported by citation to the record or legal precedent. We conclude that the only issues that Respondent has properly presented for review are the following: (1) that the ARDC and Illinois Supreme Court have no subject matter jurisdiction over the question of whether Respondent is a creditor of his former client; (2) that the instant disciplinary matter is barred by res judicata; and (3) that the Administrator failed to carry her burden of proof with respect to whether Respondent forged the promissory notes at issue. The remainder of Respondent's arguments are presented in a cursory fashion with inadequate explanation, citation to the record, and citation to relevant authority, in violation of ARDC Rule 302(f)(5). Consequently, we decline to address them.

Respondent contends that the ARDC and Illinois Supreme Court lack subject matter jurisdiction over the instant matter because the United States Bankruptcy Court "is the only court with jurisdiction to decide the genuineness of the notes signed by Greer Tucker. . ." Respondent's argument lacks merit. The Hearing Board made no finding regarding the validity of Respondent's claim in Golden's bankruptcy proceeding. Rather, it made findings regarding the authenticity of the promissory notes for the purpose of determining whether Respondent violated the Rules of Professional Conduct. Whether the Hearing Board's findings have any ramification in the Golden bankruptcy proceeding is for the bankruptcy court to determine; the Hearing Board did not purport to make such a determination. Instead, the issue the Hearing Board confronted and decided revolved around whether an

Illinois-licensed attorney participated in the falsification of documents and acted deceitfully. Our supreme court bears sole responsibility for disciplining attorneys licensed in this State. In re Ettinger, 128 Ill.2d 351, 365, 538 N.E.2d 1152 (1989). The ARDC acts as an arm of the supreme court in administering its disciplinary responsibilities. In re Mitan, 75 111.2d 118, 123-24, 387 N.E.2d 278 (1979). Hence, the ARDC and supreme court clearly have jurisdiction over the charges in this matter.

Respondent next contends that the instant disciplinary matter is barred by res judicata. The doctrine of res judicata applies when there is (1) a final judgment on the merits rendered by a court of competent jurisdiction; (2) an identity of cause of action; and (3) an identity of parties or their privies. Simcox v Simcox, 131 Ill.2d 491, 497, 546 N.E.2d 609, 137 Ill.Dec. 664 (1989). Respondent argues that the Administrator could have raised the validity of the notes in Respondent's previous disciplinary proceeding, In re Brill, No. 00 CH 34. His argument is not persuasive. It is undisputed that the notes were not admitted into evidence in the prior disciplinary proceeding and there was no judgment regarding the notes' validity. According to Respondent, he produced the promissory notes to the Administrator in 1998, so the Administrator could have pursued the forgery charges in the earlier proceeding. This contention is contrary to the Hearing Board's finding that Respondent did not testify about or produce the promissory notes during his prior disciplinary proceeding despite several opportunities to do so. Respondent cites no credible evidence to contradict the Hearing Board's finding. Accordingly, we conclude that this matter is not barred by res judicata.

Respondent further argues that the Administrator did not prove by clear and convincing evidence that the signatures on the promissory notes were forgeries. It is well-established that the Administrator bears the burden of proving the charged misconduct by clear and convincing evidence. In re Ingersoll, 186 Ill.2d 163, 168, 710, N.E.2d 390, 237 Ill. Dec. 760 (1999). The Hearing Board's factual findings, including its credibility findings, are entitled to great deference on appeal and will not be disturbed unless they are against the manifest weight of the evidence. In re Smith, 168 I11.2d 269, 283, 659 N.E.2d 896, 213 Ill. Dec. 550 (1996).

Respondent asserts that Section 5/8-1501 of the Illinois Code of Civil Procedure (735 ILCS 5/8-1501) (West 2004) required the Administrator to present expert testimony or exemplars of Golden's signature to be compared with the promissory notes. Respondent's assertion is without merit.

Section 5/8-1501 merely sets forth different methods by which a party may "prove handwriting":

> In all courts of this State it shall be lawful to prove handwriting by comparison made by the witness or jury with writings properly in the files of records of the case, admitted in evidence or treated as genuine or admitted to be genuine, by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the court. 735 ILCS 5/8-1501 (West.2004).

Section 5/8-1501 does not . state that handwriting comparisons *must* be offered as evidence. Neither does it say that expert testimony is required to prove handwriting.

And although courts have held that the genuineness of a signature is a proper question for a handwriting expert (Miles v. Graham, 7 Ill.App.3d 17, 19, 286 N.E.2d 497 (1972)), the general rule is that a jury is free to disregard that testimony if other evidence is determined to be more credible. See, e.g. (De Lage Landen Financial Services, Inc. v. Urban Partnership, LLC, 903 A. 2d 586, 591 fns. 5, 6 (Pa. Superior Ct. 2006) ("[W]e have found no legal requirement that a party alleging forgery must present a handwriting expert to support his claim."). See also U.S. v. Riddle, 41 M.J. 673, 676 (U.S. Air Force Ct. of Criminal Appeals 1994) ("We are unaware of any legal requirement for the government to prove forgery only with a handwriting expert, although the use of an expert is usually a mark of solid legal practice in preparing such a case.").

In this case, though the Administrator did not present expert evidence, the Hearing Board found that the circumstantial evidence "overwhelmingly" established that Respondent forged the promissory notes, for the reasons set forth in detail below. We can find no support in the law for Respondent's implicit contention that circumstantial evidence can never be enough, by itself, to establish forgery by a "clear and convincing" standard. And we cannot say, in the absence of any countervailing evidence, that the Hearing Board's finding in this regard was in error.

We further conclude that neither Golden's failure to defend against Respondent's lawsuit, nor her listing of her alleged debt to Respondent on her bankruptcy petition negates the findings of misconduct. Golden marked on her bankruptcy petition that her alleged debt to Respondent was disputed, so she did not admit in that proceeding that the notes were valid. As for the Du Page County lawsuit, Golden testified that she had never seen the complaint against her prior to the hearing in this matter, and the Hearing Board found that Respondent had filed the lawsuit for the purpose of harassing Golden. Ultimately, her inaction in defending the lawsuit does not preclude a finding that Respondent committed misconduct.

The Hearing Board found that the evidence overwhelmingly established that Respondent committed the charged misconduct. In so doing, it relied in large measure upon Respondent's lack of credibility. We give particular deference to the Hearing Board's credibility findings, and Respondent has provided no persuasive reason for us to reject those findings. Moreover, the remaining evidence amply supports the Hearing Board's findings. The testimony of Respondent's former attorney that Respondent never mentioned the promissory notes in the prior disciplinary action, the lack of any reference to the notes in the record of the prior disciplinary action, Respondent's sworn statements in the prior proceedings that he had no documents authorizing him to use Golden's funds, and the timing of the production of the promissory notes all support our conclusion that the Hearing Board's findings are in accord with the manifest weight of the evidence.

Respondent does not challenge the Hearing Board's recommended sanction of disbarment, and we have no reason to disagree with the Hearing Board's recommendation. As the Hearing Board noted, the supreme court has held that the perpetration of a fraud upon the court is such serious misconduct as to warrant disbarment. See In re Ingersoll, 186 Ill.2d 163, 710 N.E.2d 390 (1999); In re Bell, 147 Ill.2d 15, 588 N.E.2d 1093 (1992); In re Lewis, Jr., 138 111.2d 310, 562 N.E.2d 198 (1990). We further note that the supreme court suspended Respondent's license for 30 months and until further order of the court after the Hearing Board issued its recommendation in this matter. See Brill, No. M.R. 20757 (May 16, 2006). This lends additional support to our conclusion that disbarment is the appropriate sanction. Respondent's intentionally dishonest and deceptive misconduct has demonstrated that he is unable to abide by the ethical standards required of attorneys who are licensed to practice in Illinois. Therefore, we recommend that Respondent be disbarred.

CONCLUSION

For the foregoing reasons, we affirm the Hearing Board's factual findings and findings of misconduct. We recommend that Respondent, Kevin Michael Brill, be disbarred.

Respectfully submitted:

Daniel P. Duffy
William R. Quinlan
Thomas A. Zimmerman, Jr.

Date: February 15, 2007

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[1] All references herein to a Rule refer to the Illinois Rules of Professional Conduct.

BEFORE THE REVIEW BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

KEVIN MICHAEL BRILL,

Respondent-Appellant, Commission No. 04 CH 79

No. 6182552.

CERTIFICATION

I, Kenneth G. Jablonski, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Review Board in the above entitled cause of record filed in my office February 15, 2007.

BEFORE THE REVIEW BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

KEVIN MICHAEL BRILL, Commission No. 04 CH 79

Respondent-Appellant,

No. 6182552.

PROOF-OF SERVICE OF THE REPORT AND RECOMMENDATION OF THE REVIEW BOARD

I, Raquel Tovar, on oath state that I served copies of the Report and Recommendation of the Review Board on the parties listed at the addresses shown below by regular mail, by depositing it with proper postage prepaid, in the U.S. Mailbox located at 130 East Randolph Drive, Chicago, Illinois on February 15, 2007, at or before 5:00 p.m. At the same time, copies were mailed to the Hearing Panel, Review Board and delivered to Counsel for the Administrator-Appellee.

George B. Beggs
Counsel for Respondent-Appellant
5100 Fairview Avenue
Downers Grove, IL 60515-5288

Kevin Michael Brill
Respondent-Appellant
Kevin M. Brill
PO Box 77
Downers Grove, IL 60515-0077

Kenneth G. Jablonski, Clerk

/s/__________________________

By Raquel Tovar Assistant Clerk

Subscribed and sworn to before me
this 15th day of February, 2007.

____

/s/Notary Public

FILED
FEB 15 2007
ATTY REG & DISC COMM
CHICAGO

In re Kevin Michael Brill

Commission No. 04 CH 79

Synopsis of Hearing Board Report and Recommendation

NATURE OF THE CASE: 1) advancing a claim the lawyer knows is unwarranted under existing law; 2) making a statement of material fact to a tribunal which the lawyer knew or reasonably should know is false; 3) offering evidence the lawyer knows to be false in appearing in a professional capacity before a tribunal; 4) participating in the creation of false evidence in appearing in a professional capacity before a tribunal; 5) making a statement of material fact known by the lawyer to be false, in connection with a lawyer disciplinary matter; 6) engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; 7) engaging in conduct which is prejudicial to the administration of justice; 8) engaging in conduct which tends to defeat the administration of justice, or to bring the courts or the legal profession into disrepute; 9) forgery; and 10) filing a suit when the lawyer knows or reasonably should know that it would serve merely to harass or maliciously injure another.

RULES DISCUSSED: Rules 1.2(f)(1), 1.2(f)(2), 3.3(a)(1), 3.3(a)(4), 3.3(a)(5), 8.1(a)(1), 8.4(a)(4), 8.4(a)(5), of the Illinois Rules of Professional Conduct and Supreme Court Rule 770.

SANCTION: Disbarment.

DATE OF OPINION: September 13, 2005.

HEARING PANEL: Stuart J. Chanen, Chair, Michael L. Bolos and Matthew Bonds. RESPONDENT'S COUNSEL: Gregory B. Beggs.

ADMINISTRATOR'S COUNSEL: Robert J. Venancio.

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

KEVIN MICHAEL BRILL, Commission No. 04 CH 79

Attorney-Respondent,

No. 6182552.

REPORT AND RECOMMENDATION OF THE HEARING BOARD

INTRODUCTION

The hearing was held on February 24, 2005, at the Chicago, Illinois, offices of the Attorney Registration and Disciplinary Commission ("ARDC") before the Panel of Stuart J. Chanen, Chair, Michael L. Bolos and Matthew Bonds. Robert J. Verrando represented the Administrator of the ARDC. Respondent appeared in person and was represented by Gregory B. Beggs.

COMPLAINT

On August 25, 2004, the Administrator filed a three-count Complaint against Respondent pursuant to Supreme Court Rule 753(b). The first count charges Respondent with making false statements and creating and offering false evidence in an attorney disciplinary matter. Count II charges Respondent with forgery and creation of false evidence in a civil matter. Count III charges Respondent with making false testimony and offering false evidence in a second attorney disciplinary proceeding. On September 23, 2004, Respondent filed his Answer to The Complaint. Respondent admits some factual allegations and denies others, but denies all allegations of misconduct.

PRE-HEARING RECORD

Before the hearing commenced, several pre-hearing conferences were held. Respondent filed a Motion to Dismiss, which was denied. Respondent filed a Motion in Limine seeking to bar the Administrator from presenting the testimony of four witnesses, which motion was denied. Finally, Respondent filed objections to the Administrator's Exhibits 1-10, which after argument, were overruled.

The Administrator filed objections to several of the Respondent's Exhibits, which after argument, were sustained as to Respondent's Exhibits 12-19 and 23-30, but denied as to Exhibits 20-21.

EVIDENCE AT HEARING

The Administrator moved the admission of Exhibits 1-14, called Respondent as an adverse witness, and presented the testimony of Dennis Berkson, Jennifer Hosty, and Glourious Swanson Greer-Tucker, f/n/a Gloria Golden ("Ms. Golden"). Respondent moved the admission of Exhibits 1-31, testified on his own behalf, and called Nancy Beth Sandefur to testify. The evidence disclosed the following background information:

I. The Underlying Disciplinary Proceeding

Between 1992 and 1995, Respondent represented Ms. Golden with respect to several bankruptcy petitions. In

June 1995, Ms. Golden's home was subject to a foreclosure sale. Respondent was not involved in the actual sale of the home and did not represent Ms. Golden at the closing. At the closing, however, the net proceeds of the sale were issued in the form a $14,333.24 check made payable to the Respondent's client trust account (hereafter, the "Escrow Funds"). On June 10, 1995, Respondent deposited the Escrow Funds check into his client trust account at First Bank (the "Client Trust Account"). (Adm. Ex. 1; Adm. Ex. 5, pp. 3 & 8). Beginning on June 13, 1995, and continuing through July 1995, Respondent wrote checks to himself on his Client Trust Account in various amounts ranging from $400 to $12,243.74 (Adm. Ex. 1, pp. 17, 19, 21, 23, 38, 40 & 42). On July 21, 1995, Respondent's client trust account held a balance of $2,782.07, even though he was supposed to have had at least $14,333.24 in the account at that time. (Adm. Ex. 1, p. 25).

In August 2000, the Administrator filed a complaint against Respondent alleging that he had converted the Escrow Funds. (Adm. Ex. 5). The clerk of the Commission docketed the matter and assigned it case number 00 CH 34 (which will be referred to as "the underlying disciplinary proceeding"). (Adm. Ex. 5). Prior to the hearing in the underlying disciplinary proceeding, the Administrator's counsel, took three sworn statements and two depositions of Respondent. (Adm. Ex. 2-6). On February 23, 1998, Respondent stated under oath:

> During the course of the case that I made a preparation for trial, I expended almost $15,000 worth of time, and I think I got $4,400 from Ms. Golden after the case was dismissed. From the case that we ultimately sold her home, I think I received $13,000 which is in the client's trust account and which is not-which I don't know if I have a claim to at all.

(Adm. Ex. 2, p.12; February 24, 2005 Transcript ("Tr.") at 144).

On June 15, 1999, in response to the question, "So that the $14,333 should still be in your trust account, as you sit here today?" to which Respondent stated under oath, "I believe so, yes." (Adm. Ex. 3, p. 7; Tr. 159). Respondent further stated that day that he never made any disbursements to himself out of the escrow account. (Adm. Ex. 3, p. 10; Tr. 161).

On July 8, 1999, Respondent stated under oath that in February 1998 he was going to draft a motion in the bankruptcy court to get the $14,333 in escrow funds. (Adm. Ex. 4, p. 5; Tr. 163).

In his September 26, 2000 Answer to the Complaint in the underlying disciplinary proceeding, Respondent admitted that "at no time between June 12, 1995 and July 21, 1995, did Golden or Judge Squires authorize Respondent to disburse any of the $14,333.24 held by him to anyone or to use any portion of the funds for his own business or personal purposes." (Adm. Ex. 5, p. 3; Tr. 164).

On December 21, 2000, Respondent was asked at his deposition how it was that the balance in his account fell below what was owed in the Golden matter, and Respondent responded under oath that:

> . . .there were a couple of things that were coming in at the time, and I think it was my thinking that I was entitled to the fees from those matters. And I made a bookkeeping error and it was my error and I did let it fall below. But it was my mistake and I shouldn't have done that.

(Adm. Ex. 6, pp. 12-13; Tr. 167-168). At this hearing, Respondent admitted that he did not say anything at the December 21, 2000 deposition about a promissory note authorizing him to take Ms. Golden's escrow funds. (Tr. 169).

On October 2, 2001, a hearing was held in the underlying disciplinary proceeding. Respondent testified at the hearing that he had a conversation with Ms. Golden about applying the escrow funds to the fees she allegedly owed him and about signing a note for the remaining fees allegedly owed. Specifically, he testified:

> She said, "Well, I know you're due some fees." And I said, "Well, then I need to take these funds and apply them to my fees, and I want you to work out an installment note for me to pay the balance." And Ms. Golden said, "Well, you're certainly entitled to fees, and I think that you should get paid. But I don't know about entering into an installment contract. That's a lot of money."

(Adm. Ex. 7, p. 17; Tr. 174-175).

Later in the hearing, Respondent admitted that he did not have anything in writing establishing that Ms. Golden consented to have her funds used to pay fees. Respondent stated, "I wish I had. I wish I had." (Adm. Ex. 7, p. 21; Tr. 176)(emphasis added). Respondent further testified at the October 2, 2001 hearing:

> And after I then sat down with Ms. Golden, went through the enormous number of time that had been expended, then she consented to my withdrawal of the funds. And I can't - now, if I'm - you know, if I'm to be criticized for this, I'm absolutely to be criticized that in the midst of this, I didn't ask her sign, you know, a statement allowing me to do that. I don't have a recollection that I did. *But it's not a question of whether it happened. It didn't happen.*

(Adm. Ex. 7, p. 23; Tr. 177) (emphasis added).

On February 26, 2002, the Hearing Board issued a report and recommendation finding that Respondent had converted $14,333.24 from Ms. Golden and recommended that he be suspended for 18 months and until he made restitution (the "Report and Recommendation"). (Adm. Ex. 8, p. 45).

II. Motions Filed By Respondent After The Report and Recommendation

On March 18, 2002, Respondent filed a notice of exceptions to the Hearing Board's Report and Recommendation. On July 1, 2002, pursuant to Supreme Court Rule 774, the Illinois Supreme Court issued a mandate, suspending Respondent from the practice of law on an interim basis, effective immediately (the "Interim Order").

Sometime prior to July 8, 2002, Respondent or someone acting at his direction created a document dated July 6, 1995, entitled "Promissory Note (hereafter "the First Promissory Note"). (R. Ex. 1). The First Promissory Note stated that Ms. Golden agreed to pay Respondent $14,192.25, plus 36 percent annual interest, in monthly installments of $300. The document contains the purported signature of Ms. Golden. The First Promissory Note authorized Respondent to take $10,733.25 of the escrow funds immediately as compensation for legal services he had purportedly provided. (R. Ex. 1).

Sometime prior to July 8, 2002, Respondent or someone acting at his direction created a second document entitled "Promissory Note", also dated July 6, 1995, also containing the purported signature of Ms. Golden, and by which Ms. Golden agreed to pay Respondent $1,205, plus 36 percent annual interest, in monthly installments of $300. The agreement authorized Respondent to take $3,750 of the escrow funds (hereafter, "the Second Promissory Note"). (R. Ex. 2).

On July 8, 2002, Respondent filed a pro se appellant's brief with the Review Board in the underlying disciplinary proceeding ("July 8 Review Board Brief'). (Adm. Ex. 8). In the July 8 Review Board Brief, Respondent stated that Ms. Golden had signed "a promissory note" in his favor on July 6, 1995. Respondent attached a copy of the First Promissory Note as an exhibit to that brief. (Adm. Ex. 8, pp. 14 & 43). Respondent did not refer to or attach the Second Promissory Note.

On July 18, 2002, Respondent filed a motion with the Illinois Supreme Court to vacate the July 1, 2002 Interim Order that suspended Respondent from the practice of law (the "Motion to Vacate"). (Adm. Ex. 9). In the Motion To Vacate, Respondent stated that on July 6, 1995, Ms. Golden had consented in writing to his use of her funds. (Adm. Ex. 9, p. 2). Respondent attached to the motion copies of both the First *and* Second Promissory Notes. (Adm. Ex. 9, pp. 6-7).

On October 4, 2002, Respondent filed a reply brief with the Review Board in the underlying disciplinary proceeding and attached a copy of the Second Promissory Note (the "Reply Brief"). (Adm. Ex. 10, p. 11). In his reply brief, Respondent stated that the Second Promissory Note had been "omitted inadvertently" from. his initial brief. (Adm. Ex 10, p. 9).

On March 20, 2003, the Review Board issued its Report and Recommendation in the underlying disciplinary proceeding, in which it affirmed the Hearing Board's recommendation that Respondent be suspended for 18 months and until he made restitution to Ms. Golden in the amount of $14,333.24, (Adm, Ex. 11, p. 30). On May 20, 2003, Respondent filed with the Illinois Supreme Court, a petition for leave to file exceptions to the report and recommendation of the Review Board. (Adm. Ex. 11). In his petition to the Supreme Court, Respondent again stated that Ms. Golden had executed two promissory notes on July 6, 1995 and attached to the petition copies of both the First and Second Promissory Notes. (Adm. Ex. 11, pp. 7, 92 & 94). On September 19, 2003, the Supreme Court affirmed the suspension in the underlying disciplinary case.

III. The Second Disciplinary Proceeding

On August 18, 2003, the Administrator filed a Complaint alleging that Respondent had continued to practice law after the Illinois Supreme Court had suspended him on July 1, 2002. The clerk of the Commission docketed the matter and assigned it case number 03 CH 85 (the "second disciplinary proceeding'). (Adm. Ex. 14).

On May 11, 2004, a hearing was held in the Second Disciplinary Matter. (Adm. Ex. 14). Respondent offered into evidence, at that hearing, copies of the promissory notes and testified that they were authentic. and that Ms. Golden had executed them in his favor on July 6, 1995. (Adm. Ex. 14, p. 5). The Hearing Board ultimately ruled that the Administrator did not prove by clear and convincing evidence that Respondent had practiced law during his suspension.

IV. Respondent's Lawsuit Against Ms. Golden

On April 19, 2004, approximately one month before his scheduled hearing in the second disciplinary proceeding, Respondent filed a verified civil complaint for damages against Ms. Golden in the Circuit Court for the 18th Judicial Circuit in DuPage County ("Respondent's DuPage Complaint"). The clerk of that court docketed Respondent's DuPage Complaint and assigned it case number 04 L 403. (Adm. Ex. 12). In the complaint, Respondent alleged that Ms. Golden had executed two promissory notes in his favor on July 6, 1995, and that she therefore owed him principal and interest in the amount of $62,551.17. (Adm. Ex. 12). Respondent attached to the complaint copies of the First and Second Promissory Notes. (Adm. Ex. 12, pp. 7 & 8).

THE CURRENT DISCIPLINARY PROCEEDING

1. The Complaint

On August 25, 2004, the Administrator filed this disciplinary proceeding against Respondent and specifically a three-Count Complaint. Count I of the Complaint charged Respondent with falsely stating in the July 8 Review Board Brief, the July 18 Motion to Vacate in the Illinois Supreme Court, and the October 4 Review Board Reply Brief, that Ms. Golden had signed the First and Second Promissory Notes and that she had done so in his favor on July 6, 1995. Count I further alleged that Respondent attached the forged notes to the July 8 Review Board Brief, the July 18 Motion to Vacate, and the Review Board Reply Brief.

Count II of the Complaint charged Respondent with falsely stating in his May 20, 2003 petition to the Illinois Supreme Court that Ms. Golden had signed the First and Second Promissory Notes and that she had done so in his favor on July 6, 1995. Count II further alleged that Respondent attached the forged notes to the May 20 Illinois Supreme Court petition.

Count III of the Complaint charged Respondent with falsely stating to the Hearing Panel in 03 CH 85 that Ms. Golden had signed the First and Second Promissory Notes and that she had done so in his favor on July 6, 1995. Count III further alleged that at the May 11, 2004 hearing of that matter, Respondent offered copies of the forged notes into evidence.

II. The Hearing

Glorious Swanson Greer-Tucker

The Administrator's first witness at the hearing of this matter was Glorious Swanson Greer-Tucker, formerly known as Gloria Golden (hereafter, "Ms. Golden"). Ms.

Golden testified that in 1995 she was involved in a bankruptcy in Chicago and was represented by Respondent. During the bankruptcy proceeding, she sold her home. As a result of the sale, Respondent was to hold $14,333 in escrow funds for her benefit. (Tr. 19-20).

Ms. Golden testified that she did not authorize Respondent to use any of the Escrow Funds. Further, Ms. Golden testified that she was not in Illinois on July 6, 1995, the date that the purported promissory notes were dated, but rather was in Jackson, Mississippi for a family reunion. Ms. Golden stated that she never signed a promissory note for Respondent at any time. Ms. Golden further stated that Respondent never sent her any reminders asking her to pay the alleged $300 monthly installments due on the alleged notes. Respondent never sent her any letters or sent a collection agency after her to collect the monies due on the notes. When handed the First and Second Promissory Notes for review, Ms. Golden stated that she did not sign either document. (Tr. 19-22; Adm. Exs. 8 & 9).

Respondent's counsel questioned Ms. Golden regarding her purported signature on several documents. Specifically, Ms. Golden was shown Respondent's Exhibits 1-7 and 9-11 and asked if her signature appeared on any of the documents. The documents were contracts for legal services and bankruptcy petitions. Ms. Golden testified that none of the documents bore her signature. (Tr. 30-37).

Ms. Golden was shown a copy of the Dupage County Complaint. She stated that it was the first time that she had seen it. Ms. Golden did admit that she had been served with papers the previous year and recognized the alleged amount owed of $57,445.02. Ms. Golden testified that she did not owe Respondent $57,445.02 because he never sent her a bill. (R. Ex. 31;Tr. 4144).

On June 14, 2004. Ms. Golden filed a voluntary petition with the United States Bankruptcy Court in the Eastern

District of Michigan. Ms. Golden was represented by Carl J. Schoemer, an attorney. Her bankruptcy petition included the alleged $57,445.02 amount owed to Respondent. Ms. Golden stated that her attorney advised her to include the amount on her petition and then checked the box stating that the amount was disputed. (Tr. 47-55; R. Ex. 20).

Ms. Golden admitted that she made an application to the Client Protection Fund of the ARDC to collect some of the money that the Supreme Court said Respondent owed to her. Ms. Golden received two checks, one in the amount of $1,705.24 and one in the amount of $12,628 as a result of her application to the ARDC. Ms. Golden testified that immediately ("in a matter of days") upon receiving those checks, she disbursed the money to people that she owed and therefore she did not include the money on her petition for bankruptcy. (Tr. 62-68).

Dennis Berkson

The Administrator called Dennis Berkson to testify. Mr. Berkson has been a practicing criminal defense attorney since 1972. Mr. Berkson represented Respondent in the underlying disciplinary proceeding and filed an answer on Respondent's behalf. Mr. Berkson testified that at the hearing he did not have any documents reflecting the amount of fees that Respondent claimed were owed by Ms. Golden. Mr. Berkson further stated that he did not have written proof that Ms. Golden allowed Respondent to have the escrow funds, and if he had had such written proof, it would have been helpful to his defense of Respondent. (Tr. 87-98; Adm. Ex. 5).

Under cross-examination, Mr. Berkson testified that it was his understanding that Respondent provided the ARDC with documentation in 1998. Mr. Berkson further stated that he did not represent Respondent at that time. Mr. Berkson did not know what was provided to the ARDC but he attended a subsequent deposition with Respondent. (Tr. 99-103).

Jenny Hosty

The Administrator called Jennifer Hosty, f/k/a Jennifer Misch, who was employed as Respondent's secretary in 1995. Ms. Hosty testified that she believed she was working for Respondent in the summer of 1995. When asked if she recalled a client named Gloria Golden, Ms. Hosty stated that she remembered her name but did not meet her. Upon further examination, Ms. Hosty testified that she did not work for Respondent in July 1995. (Tr. 104-113).

Nancy Beth Sandefur

Respondent called Nancy Beth Sandefur, his sister, as a witness. Ms. Sandefur testified that on or about July 6, 1995, she was at Respondent's office. Ms. Sandefur had come downtown with her husband and daughter to visit both Respondent and her father, who was working for Respondent at the time. Ms. Sandefur testified that while she was at Respondent's office, she observed an African-American woman signing papers. Ms. Sandefur believed she knew the African-American woman's name because her father told her that they needed to wait for Gloria Golden. Ms. Sandefur testified that she saw the same woman today that she saw during her visit to Respondent's office in July 1995. (Tr. 125-132).

Upon further examination, Ms. Sandefur stated that in July 1995, the African-American woman who was in Respondent's office had her back to her and she never really saw her face. Ms. Sandefur stated that the woman she saw at the present hearing looked similar to her, but she never looked into her eyes. (Tr. 133-136).

Respondent

Respondent testified that he agreed to deposit Ms. Golden's $14,333 into his client trust account in June 1995. Respondent testified that because of a complaint filed by Ms. Golden, he was asked to give a sworn statement to the ARDC in February 1998. Respondent testified that by February 1998, he had taken and spent Ms. Golden's money. Respondent testified that he brought the Promissory Notes authorizing him to take Ms. Golden's money to the February 1998 sworn statement. Though there is no discussion of the Promissory Notes in the transcript, Respondent testified that he had a discussion regarding the Promissory Notes off the record. (Tr. 138-143).

Respondent testified that it was his understanding that once Ms. Golden's bankruptcy petition was dismissed in July 1995, all he needed was Ms. Golden's permission to take the escrow funds out of his client trust account. Respondent stated that in order to obtain permission from Ms. Golden to take the escrow funds, he 1) made a detailed statement of services for all the work he had performed prior to the bankruptcy petition and 2) had Ms. Golden sign a note that allowed him to withdraw the escrow funds. Respondent testified that as of July 1995 Ms. Golden owed Respondent approximately $25,000 in legal fees. He does not have a copy of his accounting statement. Respondent testified that he had taken Ms. Golden's escrow funds out of his client trust account in July 1995. jr. 1507153; 160-162).

Respondent testified that he asked Ms. Golden to sign the First and Second Promissory Notes in July 1995. He advised her to seek independent legal advice about entering into this kind of contract with him. Respondent stated that he brought Ms. Golden in and gave her two, detailed statement of services, which she went over and signed. He made photocopies of the signed notes and gave Ms. Golden copies. Respondent stated that Ms. Golden never made any $300 payments, which the notes recite that she was supposed to make. (Tr. 177-178).

Respondent testified that in his file for Ms. Golden there was a mock promissory note. The mock document bears Ms. Golden's signature, which someone else signed. Respondent stated that he does not know who signed Ms. Golden's name. Respondent testified that during his depositions and the hearing for the underlying disciplinary proceeding, he was not allowed to mention the notes, and the notes were not on his exhibit list. Respondent testified that he believed he gave the notes to the Administrator's counsel in February 1998. (Tr.180-195).

Respondent testified that in the underlying disciplinary proceeding, he believed the Review Board improperly excluded the First and Second Promissory Notes. Respondent then filed a petition for leave to appeal the Supreme Court. Because the Supreme Court denied his petition for leave to appeal, the Review Board's finding stood. (Tr. 199-201).

Respondent stated that Administrator advised him of her belief that the notes were forgeries. Respondent stated that the Administrator had an expert who had claimed that they were forgeries Subsequently, Respondent stated that the Administrator removed their handwriting expert from their witness list because the witness could not offer an opinion. (Tr. 220-225).

Respondent testified that he paid restitution due from the underlying disciplinary proceeding in June 2004. He also filed a civil lawsuit against Ms. Golden in the Circuit Court of DuPage County in an effort to recover the monies due on the promissory notes. Respondent stated that he appeared at a proceeding in connection with Ms. Golden's Michigan Bankruptcy and stated that he filed an objection to her discharge in that case. (Tr. 226-229).

III. Evidence Offered In Mitigation

There was no evidence offered in mitigation.

IV. Evidence Offered In Aggravation

The Illinois Supreme Court has disciplined Respondent on two prior occasions. On July 26, 1988, the Illinois Supreme Court censured Respondent for neglecting eight divorce and bankruptcy cases and failing to keep his clients informed of the status of their cases. In re Brill, 86 CH 219, M.R. 4955 (July 26, 1988).

In addition, on September 19, 2003, the Illinois Supreme Court suspended Respondent from the practice of law for 18 months for converting Ms. Golden's funds and until he made restitution of the $14,333.24 he had converted. In re Brill, 00 CH 34, M.R. 18717 (July 1, 2002).

Additional aggravating evidence offered by the Administrator relates to a bankruptcy that Ms. Golden filed in United States Bankruptcy Court in the Eastern District of Michigan on June 14, 2004 (the "Michigan bankruptcy proceeding'). On September 13, 2004, Respondent filed a complaint in the Michigan bankruptcy proceeding, objecting to Ms. Golden's discharge in bankruptcy. Respondent claimed in the objection that Ms. Golden owed Respondent $57.,445.02 in attorney's fees and further accused Ms. Golden received of lying to the Court by failing to identify on her bankruptcy petition the two checks she had received from the ARDC (one for $12,628 and one for $1,705.24).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

There is one primary factual question in this case: did Gloria Golden sign the two promissory notes Respondent asserts she signed or are they forgeries that he created after the Report and Recommendation in the underlying disciplinary proceeding?

In an attorney disciplinary proceeding such as this, the burden is on the Administrator to prove the misconduct alleged by clear and convincing evidence. Supreme Court Rule 753(c)(6); In re Ingersoll, 186 Ill. 2d 163, 168, 710 N.E.2d 390 (1999). It is the responsibility of the Hearing Panel to determine the credibility and believability of the witnesses, weigh the conflicting testimony, draw inferences, and make factual findings based upon all the evidence. In re Timpone, 157 Ill. 2d 178, 196, 623 N.E.2d 300, 308 (1993). Here, the Administrator must prove by clear and convincing evidence that Respondent forged or caused to forged Ms. Golden's signatures on the two promissory notes. The Administrator has met her burden overwhelmingly.

We find most compelling the significant number of opportunities given to Respondent in his underlying disciplinary proceeding to both testify about and produce the First and Second Promissory notes. Not only did Respondent fail to produce the documents and fail to testify about them, but during that hearing, on several occasions, in sworn statements, Respondent expressly denied that he had anything in writing to suggest that he had authority to use the escrow funds or that Ms. Golden owed him money for attorney fees. Specifically, during sworn statements, taken on February 23, 1998, June 15, 1999, and July 8, 1999, Respondent stated under oath that he did not have a claim to Ms. Golden's escrow funds and that he did not take any of those funds out of his client trust account. During Respondent's December 21, 2000 deposition, Respondent did not say anything to the Administrator about a promissory note or notes that authorized him to take Ms. Golden's escrow funds.

On October 2, 2001 at a hearing in the underlying disciplinary proceeding, Respondent testified that he had a conversation with Ms. Golden regarding attorney fees and that Ms. Golden expressed her unwillingness to enter into an installment contract. When asked at the hearing whether he had anything in writing establishing that Ms. Golden consented to have her funds used to pay his fees, Respondent responded under oath, "I wish I had. I wish I had." (Adm. Ex. 7, p. 21; Tr. 176)(emphasis added). He later stated that he had obtained her consent orally to withdraw the funds he stated she owed him, but that he "didn't ask her to sign . . . a statement allowing me to do that. I don't have a recollection that I did. But it's not a question of whether it happened. It didn't happen." (Adm. Ex. 7, p. 23; Tr. 177) (emphasis added). At the present hearing, Respondent admitted that he made the above-listed statements. Nevertheless, despite these numerous prior inconsistent statements, Respondent now insists that the First and Second Promissory Notes have existed since July 1995, and that he has been authorized since that time to take Ms. Golden's money out of his escrow account.

Respondent's numerous, repeated statements that he had nothing in writing and his failure to bring the alleged promissory notes to the attention of the Hearing Panel render incredible any notion that these promissory notes were actually negotiated, entered, and signed by Ms. Golden on July 6, 1995, or ever for that matter. It is inconceivable that Ms. Golden in fact signed the promissory notes in July 1995, also, that Respondent was charged in August 2000 with taking her money without her authority, and that despite being charged with misconduct and being asked repeatedly about any documentation signed by her, Respondent simply forgot that such highly exculpatory promissory notes existed. In the view of this Hearing Panel, these statements from the underlying disciplinary hearing (as well as the statements under oath, deposition statements, and the answer to the Complaint) establish overwhelmingly that the First and Second Promissory Notes are forgeries, that they were created without the authorization of Ms. Golden, and that her purported signatures on the documents are forged.

We further find that Respondent created the forged promissory notes for the sole purpose of trying to submit false evidence before the Review Board and Illinois Supreme Court, all for the purpose of getting out from under the Hearing Board's February 26, 2002 Report and Recommendation in the underlying disciplinary proceeding, that is to avoid the recommendation that Respondent be suspended for 18 months and until $14,333.24 in restitution was paid to the victim, Ms. Golden. We also specifically find that Respondent presented these forged documents and made false statements to the Review Board in 00 CH 34, the Illinois Supreme Court in 00 CH 34, the Circuit Court of DuPage County in 04 L 403, and the Hearing Board in 03 CH 85.

Having concluded that Respondent's own prior testimony, omissions, and actions unequivocally establish that the promissory notes are forgeries, this Panel was not required to put much weight on the testimony that occurred at the hearing of this disciplinary proceeding. To the extent the Panel relied on the testimony, it further supports the conclusions reached above. First, we find the testimony of Ms. Golden that she did not sign the promissory notes to be credible, and we find the testimony of both Mr. Brill, and his sister, Nancy Beth Sandefur, to be highly incredible. The findings of the Hearing Board with respect to the credibility of witnesses are entitled to great deference. In re Smith, 168 Ill. 2d 269, 659 N.E.2d 896 (1995). As to Mr. Brill's testimony that Ms. Golden came to his office on July 5, 1995 and signed two promissory notes and that he attempted to tender the notes to the Administrator during the underlying disciplinary proceeding, we find his testimony not credible in form and substance. The words he stated cannot be reconciled with his prior testimony, and his demeanor was such that we simply did not believe him on this controlling issue.

Respondent's sister's testimony was equally not credible. Ms. Sandefur testified that she saw Ms. Golden sign documents at Respondent's office on July 5, 1995, but under cross-examination, her ability to recall details, reconcile what she purported to see with known facts, and her overall demeanor made the story simply not believable. Indeed, she.testified that she never really had a good look at Ms. Golden's face, and in any event, the alleged testimony in question occurred almost ten years ago. That Ms. Sandefur remembered, ten years later, the relatively mundane event of seeing a client signing papers at her brother's office is itself simply not believable.

After careful consideration of the testimony and exhibits, as well as the Administrator's burden to establish her case by clear and convincing evidence, we make the following findings:

Count I

We find that Respondent forged the signature of Ms. Golden on the First Promissory Note. When Respondent attached the First Promissory Note to his appellate brief and filed the First Promissory Note as an exhibit before the Review Board, he falsely claimed that he was entitled to the amount of funds listed on the note. We find that Respondent knew the First Promissory Note was forged and Respondent made statements regarding the note, before the Review Board, that he knew were false.

Further, we find that Respondent forged the signature of Ms. Golden on the Second Promissory Note. Respondent attached both the First and Second Promissory Notes to a motion filed before the Illinois Supreme Court and then later to a motion filed before the Review Board. Because Respondent was representing himself, we find that

Respondent offered evidence to the Illinois Supreme Court and the Review Board, in his professional capacity as a lawyer, that he forged and knew were falsified documents.

Finally, we find that Respondent intended to deceive the Review Board and the Illinois Supreme Court in order to escape the sanctions imposed upon Respondent in the underlying disciplinary proceeding. We find that Respondent's egregious misconduct prejudices the administration of justice and seriously diminishes the reputation of the legal profession.

Specifically, in Count 1, we find Respondent guilty of:

a. advancing a claim the lawyer knows in unwarranted under existing law in violation of Rule 1.2(f)(2) of the Illinois Rules of Professional Conduct;

b. making a statement of material fact to a tribunal which the lawyer knew or reasonably should know is false in violation of Rule 3.3(a)(1) of the Illinois Rules of Professional Conduct;

c. offering evidence the lawyer knows to be false in appearing in a professional capacity before a tribunal in violation of Rule 3.3(a)(4) of the Illinois Rules of Professional Conduct;

d. participating in the creation of false evidence in appearing in a professional capacity before a tribunal in violation of Rule 3.3(a)(5) of the Illinois Rules of Professional Conduct;

e. making a statement of material fact known by the lawyer to be false, in connection with a lawyer disciplinary matter, in violation of Rule 8.1(a)(1) of the Illinois Rules of Professional Conduct;

f. engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(a)(4) of the Illinois Rules of Professional Conduct;

g. engaging in conduct which is prejudicial to the administration of justice in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct; and

h. engaging in conduct which tends to defeat the administration of justice, or to bring the courts or the legal profession into disrepute, in violation of Supreme Court Rule 770.

Count II

We find that Respondent filed a civil complaint for damages against Ms. Golden in the Circuit Court for the 18‴ Judicial Circuit in DuPage County. In the complaint, Respondent alleged that Ms. Golden had executed two promissory notes in his favor and therefore, Ms. Golden owed Respondent $62,551.17. Respondent attached both the First Promissory Note and the Second Promissory Note to the complaint. We find that Respondent forged both promissory notes. We find that Respondent knew the notes were false documents and Respondent knew that the allegations contained in the complaint were also false.

We find that Respondent filed the complaint with the intent to harass and maliciously injure Ms. Golden, and in an attempt to lend credibility to his false assertions in the underlying disciplinary proceeding. We find that Respondent filed the complaint with the intent to deceive the Circuit Court of Cook County. We find that Respondent's egregious misconduct prejudices the administration of justice and seriously diminishes the reputation of the legal profession.

Specifically, in Count II, we find Respondent guilty of:

a. forgery;

b. filing a suit when the lawyer knows or reasonably should know that it would serve merely to harass or maliciously injure another in violation of Rule 1.2(f)(1) of the Illinois Rules of Professional Conduct;

c. advancing a claim the lawyer knows is unwarranted under existing law in violation of Rule 1.2(f)(2) of the Illinois Rules of Professional Conduct;

d. making a statement of material fact to a tribunal which the lawyer knew or reasonably should know is false in violation of Rule 3.3(a)(1) of the Illinois Rules of Professional Conduct;

e, offering evidence the lawyer knows to be false in appearing in a professional capacity before a tribunal in violation of Rule 3.3(a)(4) of the Illinois Rules of Professional Conduct;

f. participating in the creation of false evidence in appearing in a professional capacity before a tribunal in violation of Rule 3.3(a)(5) of the Illinois Rules of Professional Conduct;

g. engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(a)(4) of the Illinois Rules of Professional Conduct;

h. engaging in conduct which is prejudicial to the administration of justice in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct; and

i. engaging in conduct which tends to defeat the administration of justice, or to bring the courts or the legal profession into disrepute, in violation of Supreme Court Rule 770.

Count III

On August 18, 2003, the Administrator filed a complaint against Respondent alleging that he had continued to practice law after the Illinois Supreme Court suspended him on July 1, 2002. On May 11, 2004, a hearing was held.

During the hearing, Respondent testified that Ms. Golden had executed the First and Second Promissory Notes in his favor, offered the notes into evidence and stated that the notes were authentic. We find that the promissory notes were forged and that Respondent knew the notes were forged. We find that Respondent offered the First and Second Promissory Notes with the intent to deceive the Hearing Board. We find that Respondent's egregious misconduct prejudices the administration of justice and seriously diminishes the reputation of the legal profession.

Specifically, in Count III, we find Respondent guilty of

a. making a statement of material fact to a tribunal which the lawyer knew or reasonably should know is false in violation of Rule 3.3(a)(1) of the Illinois Rules of Professional Conduct;

b. offering evidence the lawyer knows to be false in appearing in professional capacity before a tribunal in violation of Rule 3.3(a)(4) of the Illinois Rules of Professional Conduct;

c. making a statement of material fact known by the lawyer to be false, in connection with a lawyer disciplinary matter, in violation of Rule 8.1(a)(1) of the Illinois Rules of Professional Conduct;

d. engaging in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(a)(4) of the Illinois Rules of Professional Conduct;

e. engaging in conduct which is prejudicial to the administration of justice in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct; and

f. engaging in conduct which tends to defeat the administration of justice, or to bring the courts or the legal profession into disrepute, in violation of Supreme Court Rule 770.

Mitigation and Aggravation

As noted above, Respondent did not offer any evidence in mitigation. The Administrator offered several pieces of evidence in aggravation, including that the Illinois Supreme Court has disciplined Respondent on two prior occasions. The Court has previously censured Respondent for neglecting eight divorce and bankruptcy cases and failing to keep his clients informed of the status of their cases, In re Brill, 86 CH 219, M.R. 4955 (July 26, 1988), and suspended Respondent from the practice of law for 18 months for converting Ms. Golden's funds and until he made restitution of the $14,333.24 he had converted, In re Brill, 00 CH 34, M.R. 18717 (July 1, 2002).

The Hearing panel finds in further aggravation that Respondent filed an objection in Ms. Golden's Michigan bankruptcy proceeding for the purposes of further harassing her and to discredit her for purposes of the then imminent disciplinary hearing in this matter.

RECOMMENDATION

The purpose of the disciplinary system is to protect the public, maintain the integrity of the legal system and safeguard the administration of justice. In re Howard, 188 Ill. 2d 423, 434, 721 N.E.2d 1126 (1999). We should not recommend a sanction, which will neither benefit the public or the legal profession. In re Leonard, 64 Ill. 2d 398, 406, 356 N.E.2d 62 (1976). In determining the proper sanction, we consider the proven misconduct along with any aggravating and mitigating factors. In re Witt, 145 Ill. 2d 380, 298, 583 N.E.2d 526 (1991). The Administrator has recommended that Respondent be disbarred. We consider the following case law as guidance for making the proper recommendation:

The respondent in In re Ingersoll, 186 Ill. 2d 163, 710 N.E.2d 390 (1999), was charged with submitting false documents to a tribunal, commingling funds, revealing client confidences, and filing false statements in a civil proceeding. There, the respondent provided the Administrator two different accounts of his role in the preparation and filing in a false affidavit. His client testified that the respondent knew the information was false, contradicting both of the respondent's explanations. Upon review, the Supreme Court stated that the respondent's actions, preparing and filing a false affidavit, reveals a disregard for ethical concerns, and it disbarred respondent.

In In re Bell, 147 Ill. 2d 15, 588 N.E.2d 1093 (1992), the respondent was found guilty of fraud, neglect, filing false documents before the Supreme Court and submitting false letters and sworn statements to the ARDC. There, the Supreme Court stated, "Perpetration of a fraud upon this court or any tribunal is conduct of such a serious nature as to warrant disbarment." (See also In re Mitan, 75 Ill. 2d 118, 387 N.E.2d 278 (1979); In re Yamaguchi, 118 Ill. 2d 417, 515 N.E.2d 1235 (1987)). Further, the Supreme Court reiterated, "The giving of false testimony demonstrates a further unfitness of an attorney to practice law." In re Stillo, 68 Ill. 2d 49, 368 N.E.2d 897 (1977). The respondent was disbarred.

Similarly, the respondent in In re Lewis, Jr., 138 Ill. 2d 310, 347, 562 N.E.2d 198 (1990), was disbarred for commingling and converting client funds, providing false testimony, filing false documents with the bankruptcy court and repeatedly executing fraudulent documents. After reviewing the evidence, the Supreme Court held, "Because of the overwhelming amount of serious misconduct on the part of respondent, the lack of sufficient mitigating factors and respondent's failure to comprehend the wrongfulness of his actions, we have determined that disbarment is not only appropriate, but essential."

The Hearing Board in In re Colon, 03 CH 121, M.R. 20094 (May 20, 2005), recommended that the respondent be disbarred after finding that he made improper business transactions, submitted loan applications with false information, converted client funds, and made misrepresentations to other attorneys and the ARDC. There, no mitigating factors were offered other than the fact that the respondent had not been previously disciplined. The Hearing Board stated, "as for our duty to safeguard the public, we believe that the misconduct in this case was so calculating and multifaceted that both future clients and members of the public would be at risk if the respondent were allowed to practice law." The Supreme Court approved the recommendation and the respondent was disbarred.

The Hearing Board also recommended, and the Supreme Court approved, the disbarment of the respondent in In re Hester, 03 CH 109, M.R.19802 (January 14, 2005). There, the respondent was charged with two counts of unauthorized practice of law and filing a false affidavit to the Supreme Court. The Hearing Board found that given the respondent's actions were intentionally dishonest, exhibited contempt for the process, and demonstrated that he was unfit to practice law.

Finally, in In re Bagdade, 03 CH 60, M.R. 19982 (May 19, 2005), the respondent was charged with six counts of misconduct, including neglect, dishonesty with respect to false information contained in a certificate of service, unauthorized practice of law, and dishonesty in connection with the disciplinary proceeding itself. The Hearing Board stated that the evidence was clear that the respondent knowingly and intentionally made false statements not only to his client and employer, but also to several courts. The Supreme Court approved the Hearing Board's recommendation and ordered the respondent disbarred.

Here, there is clear and convincing evidence that Respondent forged his client's signature on two promissory notes and submitted the documents to different tribunals. In applying the above-cited precedent to the proven misconduct in the instant case, we find overwhelming similarities. As in the present case, each matter cited above involves the existence of misconduct so serious as to indicate a fundamental lack of respect for the disciplinary process, the judiciary, the judicial process, and a lawyer's basic obligations to his clients and the profession.

Next, we consider any mitigating and aggravating evidence. In determining the appropriate sanction, it is necessary to consider all of the aggravating and mitigating circumstances relevant to the case. See In re Gorecki, 208 Ill. 2d 350, 802 N.E.2d 1194 (2003); In re Powell, 126 Ill. 2d 15, 533 N.E.2d 831 (1988)). Here, Respondent did not offer any mitigating evidence. Respondent did not offer any character witnesses or evidence of community involvement. There is, however, significant aggravating evidence. As noted above, Respondent has been disciplined on two prior occasions. (Respondent also may have avoided a third disciplinary sanction by providing the Hearing Board in 03 CH 85 the same false information and documents that are at issue in this proceeding. There is no way of knowing at this juncture whether the false statements made to that panel affected the result in that proceeding.)

Respondent has failed to admit any wrongdoing, express remorse, or, in the panel's view, even to comprehend the nature and seriousness of what he has done.

We further find as an aggravating factor that Ms. Golden was victimized not once by Respondent, but on an on-going basis since July 2002. The disciplinary matter initially brought against Respondent was that he had converted her Escrow Funds. Respondent admitted to the Hearing Panel in the underlying disciplinary proceeding that he had not obtained anything from Ms. Golden in writing to justify his taking her money for his own personal use. The Panel found that the money had been converted and that he had to return it. Instead of doing so, Respondent began a campaign of harassing and discrediting Ms. Golden. He forged or caused to be forged her signature, lied about her actions to the Review Board and Illinois Supreme Court; and then filed the DuPage lawsuit against her seeking not only the $14,333.24 he had improperly taken from the trust account, but suing her for that sum, plus $48,217.93 in interest. He followed the same course of action later in Ms. Golden's Michigan bankruptcy case, when he told the Michigan Bankruptcy Court that Ms. Golden had signed two promissory notes in his favor for attorney's fees and that Ms. Golden owed Respondent $62,551.17, both of which are false statements.

Here, too, we find that it is our duty to safeguard the public. We believe, as the court found in Colon, that the misconduct in this case is so intentionally dishonest, calculating, and self-serving that both future clients and members of the public would be at risk if Respondent were allowed to continue to practice law.

CONCLUSION

Considering the nature of Respondent's misconduct, significant aggravating factors, and the lack of mitigation, this Panel recommends Respondent be disbarred.

Date Entered: September 13, 2005

/s/______________________

Stuart J. Chanen, Chair,

with Michael L. Bolos and Matthew Bonds, concurring.

PROMISSORY NOTE

$ 1,205 DATE July 6, 1995

I promise to pay to the order of Kevin M. Brill and Associates, 53 W. Jackson Blvd., Suite 1741, Chicago, Illinois 60604 one thousand two hundred five Dollars with interest at 3 percent per month after this date until paid. Interest shall be waived if payment of entire amount due is made when due. Payment shall be made in installments as follows:

$300.00 per month commencing 8-1-95. Client is in receipt of Brill's statement of service for 95 B 3365 in the amount of $4705.00 plus $250 cost. date 7-5-95.Client authorizes attorney Brill to wirthdraw $3,500 plus $250 for costs from his client's Trust account and apply said funds to the fees due on 7-5-95 statement. The above balance reflects deduction of the....

If default be made in the payment of any said installment, then all unpaid installments shall, at the option, of Kevin M. Brill and Associates.become immediately due and payable without notice or demand.

And to secure the payment of said amount, I hereby authorize, irrevocably, any attorney of any court of record, to appear for me in such court at any time after default and confess a judgment, without process, in favor of the holder of this note, for such amount as may appear to be unpaid thereon, together with' costs and attorney fees, and to waive and release all errors which may intervene in any such judgment: hereby ratifying and confirming all that my said attorney may do by virtue hereof.

/s/ Gloria J. Golden

Kevin M. Brill. and Associates
53 West Jackson Blvd., Suite 1741
Chicago, IL 60604
(312) 786-0105

PROMISSORY NOTE

$14,192.25 DATE July 6, 1995

I promise to pay to the order of Kevin M. Brill and Associates, 53 W. Jackson Blvd., Suite 1741, Chicago, Illinois 60604 fourteen thousand one hundred ninety two and 25/100 dollars with interest at 3 percent per month after this date until paid. Interest shall be waived if payment of entire amount due is made when due. Payment shall be made in installements as follows:

$300 per month commencing 8-1-95. Client acknowledges receipt of Brill's statement of services dated 7-6-95. Clinet approves said statement in the amount of $24,925.50. Client authorizes attorney Brill to withdraw $10,733.from his client's Trust account and apply said funds to the fees due on that statement. The balance above reflects deduction of the $10,733.25.

If default be made in the payment of any said installment, then all unpaid installments shall, at the option of Kevin M. Brill and Associates, become immediately due and payable without notice or demand.

And to secure the payment of said amount, I hereby authorize, irrevocably, any attorney of any court of record, to appear for me in such court at any time after default and confess a judgment, without process, in favor of the holder of this note, for such amount as may appear to be unpaid thereon, together with costs and attorney fees, and to waive and release all errors which may intervene in any such judgment: hereby ratifying and confirming all that my said attorney may do by virtue hereof.

/s/ Gloria J. Golden

Kevin M. Brill. and Associates
53 West Jackson Blvd., Suite 1741
Chicago, IL 60604
(312) 786-0105

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:)
KEVIN MICHAEL BRILL,)
)
Attorney-Respondent,) Commission Number
) 04 CH 79
No. 6182552.)

COMPLAINT

Mary Robinson, Administrator of the Attorney Registration and Disciplinary Commission, by her attorney, Robert J. Verrando, pursuant to Supreme Court Rule 753(b), complains of Respondent, Kevin Michael Brill, who was licensed to practice law in the State of Illinois on November 1, 1982, and alleges that Respondent has engaged in the following conduct which tends to defeat the administration of justice or to bring the courts or the legal profession into disrepute:

COUNT I

(Making false statements and creating and offering false evidence in an attorney disciplinary matter)

1. In August 2000, the Administrator filed a complaint against Respondent alleging that he had converted funds from the proceeds of the sale of the home of client Gloria Golden ("Golden"), which funds had been entrusted to him in June 1995. The clerk of the Commission docketed the

matter and assigned it case number 00 CH 34.

2. On October 2, 2001, a hearing was held in case number 00 CH 34. On February 26, 2002, the Hearing Board issued a report and recommendation finding that Respondent had converted $14,333.24 from Golden and recommending that he be suspended for 18 months and until he made restitution.

3. On March 18, 2002, Respondent filed a notice of exceptions to the report and recommendation of the Hearing Board in case number 00 CH 34.

4. On July 1, 2002, the Illinois Supreme Court issued a mandate suspending Respondent from the practice of law on an interim basis, effective immediately, pursuant to Supreme Court Rule 774.

5. Sometime prior to July 8, 2002, Respondent or someone acting at his direction created and affixed the purported signature of Golden to a document entitled "Promissory Note," which was dated July 6, 1995 and by which Golden purportedly agreed to pay Respondent $14,192.25, plus 36 percent annual interest, in monthly "installments" of $300 and to authorize Respondent to take $10,733.25 of the funds entrusted to him on her behalf as compensation for legal services he had provided.

6. At the time Respondent created the document described in paragraph five, above, he knew that Golden had not executed such a note and that the document was not genuine.

7. Respondent created the document described in paragraph five, above, with the intent to deceive the Administrator, the Commission Review Board and the Illinois Supreme Court regarding the facts surrounding his use of Golden's funds in 1995.

8. On July 8, 2002, Respondent filed a pro se appellant's brief with the Review Board in case number 00 CH

34. In the brief, Respondent stated that Golden had signed a promissory note in his favor on July 6, 1995. Respondent attached as an exhibit to the brief a copy of the purported promissory note described in paragraph five, above, as evidence in support of his claim that Golden had signed a promissory note on July 6, 1995.

9. Respondent's statement described in paragraph eight, above was false, and his attachment of the purported promissory note to his brief was intended to deceive the Administrator and the ReviewBoard regarding the facts surrounding Respondent's use of Golden's funds in 1995. At the time Respondent filed the brief, Golden had not executed a promissory note in his favor on July 6, 1995, the purported promissory note was not genuine, and Respondent was aware of these facts.

10. Sometime prior to July 8, 2002, Respondent or someone acting at his direction created and affixed the purported signature of Golden to a second document entitled "Promissory Note," which was dated July 6, 1995 and by which Golden purportedly agreed to pay Respondent $1,205, plus 36 percent annual interest, in monthly "installments" of $300 and to authorize Respondent to take $3,750 of the funds entrusted to him on her behalf as compensation for legal services he had provided.

11. At the time Respondent created the document described in paragraph 10, above, Golden had not executed such a note, the document was not genuine, and Respondent was aware of these facts.

12. Respondent created the document described in paragraph 10, above, with intent to deceive the Administrator, the Commission Review Board and the Illinois Supreme Court regarding the facts surrounding his use of Golden's funds in 1995.

13. On July 18, 2002, Respondent filed a motion to vacate the July 1, 2002 interim suspension order with the

Illinois Supreme Court in case number 00 CH 34. In the motion, Respondent stated that Golden had consented in writing to his use of her funds on July 6, 1995. Respondent attached to the motion copies of the purported promissory notes described in paragraphs five and 10, above.

14. Respondent's statement described in paragraph 13, above was false, and his attachment of the purported promissory notes to his motion was intended to deceive the Administrator and the Illinois Supreme Court regarding the facts surrounding Respondent's use of Golden's funds in 1995. At the time Respondent filed his motion, Golden had not executed promissory notes in his favor on July 6, 1995, the purported promissory notes were not genuine, and Respondent was aware of these facts.

15. On October 4, 2002, Respondent filed a reply brief with the Commission Review Board in case number 00 CH 34. Respondent attached to his reply brief a copy of the second purported promissory note described in paragraph 10, above. In his reply brief, Respondent stated that the second purported promissory note had been "omitted inadvertently" from his appellant's brief in case number 00 CH 34:

16. Respondent's statement described in paragraph 15, above was false, and his attachment of the purported promissory note to his reply brief was intended to deceive the Administrator and the Commission Review Board regarding the facts surrounding Respondent's use of Golden's funds in 1995. At the time Respondent filed his reply brief, Golden had not executed a promissory note in his favor on July 6, 1995, the purported promissory note was not genuine, and Respondent was aware of these facts.

17. On March 20, 2003, the Review Board issued its report and recommendation in case number 00 CH 34, in which it affirmed the Hearing Board's recommendation that Respondent be suspended for 18 months and until he made restitution to Golden in the amount of $14,333.24.

18. On May 20, 2003, Respondent filed a petition for leave to file exceptions to the report and recommendation of the Review Board in case number 00 CH 34 with the Illinois Supreme Court. In his petition, Respondent stated that Golden had executed two promissory notes on July 6, 1995. Respondent attached to the petition copies of the purported promissory notes described in paragraphs five and 10, above.

19. Respondent's statement described in paragraph 18, above was false, and his attachment of the purported promissory notes to his petition was intended to deceive the Administrator and the Illinois Supreme Court regarding the facts surrounding Respondent's use of Golden's funds in 1995. At the time Respondent filed his petition, Golden had not executed promissory notes in his favor on July 6, 1995, the purported promissory notes were not genuine, and Respondent was aware of these facts.

20. By reason of the conduct described above, Respondent has engaged in the following misconduct:

a. advancing a claim the lawyer knows is unwarranted under existing law in violation of Rule 1.2(f)(2) of the Illinois Rules of Professional Conduct;

b. making a statement of material fact to a tribunal which the lawyer knew or reasonably should know is false in violation of Rule 3.3(a)(1);

c. offering evidence the lawyer knows to be false in appearing in a professional capacity before a tribunal in violation of Rule 3.3(a)(4);

d. participating in the creation of false evidence in appearing in a professional capacity before a tribunal in violation of Rule 3.3(a)(5);

e. making a statement of material fact known by the lawyer to be false, in connection with a lawyer disciplinary matter, in violation of Rule 8.1(a)(1);

f. conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(a)(4);

g. conduct which is prejudicial to the administration of justice in violation of Rule 8.4(a)(5); and

h. conduct which tends to defeat the administration of justice, or to bring the courts or the legal profession into disrepute, in violation of Supreme Court Rule 770.

COUNT II

(Forgery and creation of false evidence in a civil matter)

1-19. The Administrator realleges paragraphs One through 19 of Count I, above.

20. On April 19, 2004, Respondent, or someone acting at his direction, filed a verified civil complaint for damages against Golden in the Circuit Court for the 18th Judicial Circuit in DuPage County. The clerk of the court docketed the matter and assigned it case number 04 L 403.

21. In the complaint described in paragraph 20, above, Respondent alleged that Golden had executed promissory notes in his favor on July 6, 1995 and that she therefore owed him principal and interest in the amount of $62,551.17.

22. Respondent attached to the complaint described in paragraph 20, above, copies of the purported promissory notes described in paragraphs five and 10 of Count I, above.

23. At the time he filed the complaint described in paragraph 20, above; Respondent knew or should have known that the allegations contained therein were false, that Golden had not executed the purported promissory notes and that they were not genuine.

24. Respondent filed the complaint described in paragraph 20 above, with intent to harass or maliciously injure

Golden and to deceive the Administrator, the Illinois Supreme Court and the Circuit Court of Cook County regarding Golden's contractual obligations to him.

25. By reason of the conduct described above, Respondent has engaged in the following misconduct:

a. forgery;

b. filing a suit when the lawyer knows or reasonably should know that it would serve merely to harass or maliciously injure another in violation of Rule 1.2(f)(1) of the Illinois Rules of Professional Conduct;

c. advancing a claim the lawyer -knows is unwarranted under existing law in violation of Rule 1.2(f)(2);

d. making a statement of material fact to a tribunal which the lawyer knew or reasonably should know is false in violation of Rule 3.3(a)(1);

e. offering evidence the lawyer knows to be false in appearing in a professional capacity before a tribunal in violation of Rule 3.3(a)(4);

f. participating in the creation of false evidence in appearing in a professional capacity before a tribunal in violation of Rule 3.3(a)(5);

g. conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(a)(4);

h. conduct which is prejudicial to the administration of justice in violation of Rule 8.4(a)(5); and

i. conduct which tends to defeat the administration of justice, or to bring the courts or the legal profession into disrepute, in violation of Supreme Court Rule 770.

COUNT III

(False testimony and offering false evidence in a second attorney disciplinary proceeding)

1-24. The Administrator realleges paragraphs One through 24 of Counts I and II, above.

25. On August 18, 2004 the Administrator filed a complaint against the Respondent alleging that he had continued to practice law after the Illinois Supreme Court suspended him on July 1, 2002. The clerk of the Commission docketed the matter and assigned it case number 03 CH 85.

26. On May 11, 2004, a hearing was held in case number 03 CH 85. During the hearing, Respondent testified that Golden had executed promissory notes in his favor on July 6, 1995 (Tr. 207-210), and identified the purported promissory notes described in paragraphs five and 10 of Count I, above, as authentic.

27. During the May 11, 2004 attorney disciplinary hearing, Respondent offered into evidence copies of the purported promissory notes described in paragraphs five and 10 of Count I, above (Tr. 234-38).

28. At the time of the May 11, 2004 attorney disciplinary hearing, Golden had not executed promissory notes on July 6, 1995, the purported promissory notes were not genuine, and Respondent was aware of these facts.

29. By reason of the conduct described above, Respondent has engaged in the following misconduct:

a. making a statement of material fact to a tribunal which the lawyer knew or reasonably should know is false in violation of Rule 3.3(a)(1) of the Illinois Rules of Professional Conduct;

b. offering evidence the lawyer knows to be false in appearing in a professional capacity before a tribunal in violation of Rule 3.3(a)(4);

c. making a statement of material fact known by the lawyer to be false, in connection with a lawyer disciplinary matter, in violation of Rule 8.1(a)(1);

d. conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(a)(4);

e. conduct which is prejudicial to the administration of justice in violation of Rule 8.4(a)(5); and

f. conduct which tends to defeat the administration of justice, or to bring the courts or the legal profession into disrepute, in violation of Supreme Court Rule 770.

WHEREFORE, the Administrator requests that this case be assigned to a panel of the Hearing Board, that a hearing be conducted, that the panel make findings of fact and conclusions of fact and law and a recommendation for such discipline as is warranted.

Respectfully Submitted,

Mary Robinson, Administrator
Attorney Registration and Disciplinary Commission

By:_______________

/s/Robert J. Verrando

Robert J. Verrando
Counsel for the Administrator
130 East Randolph Drive, #1500
Chicago, Illinois 60601
Telephone: 312-565-2600

STATE OF ILLINOIS
SUPREME COURT

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the eighth day of September, 2003.

Present: Mary Ann G. McMorrow, Chief Justice
Justice Charles E. Freeman Justice Thomas R. Fitzgerald
Justice Robert R. Thomas
Justice Thomas L. Kilbride
Justice Rita B. Garman
Justice Philip J. Rarick

On the nineteenth day of September, 2003, the Supreme Court entered the following judgment:

In re: M.R.18717

Kevin Michael Brill
4520 Washington Street
Downers Grove, IL 60515-2833

Attorney Registration and Disciplinary Commission
OOCH34

The petition by respondent Kevin Michael Brill for leave to file exceptions to the report and recommendation of the Review Board is denied. Respondent is suspended from the practice of law for eighteen (18) months and until he makes restitution in the amount of $14,333.24 to Gloria Golden, as recommended by the Review Board.

Respondent Kevin Michael Brill shall reimburse the Disciplinary Fund for any Client Protection payments arising from his conduct prior to the termination of the period of suspension.

Order entered by the Court.

As Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, I certify that the foregoing is a true copy of the final order entered in this case.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court, this nineteenth day of September, 2003.

/s/________________________________

Clerk, Supreme Court of the State of Illinois

No.

In the
SUPREME COURT OF THE STATE OF ILLINOIS

In the Matter of
KEVIN MICHAEL BRILL,
Petitioner.

CORRECTED PETITION FOR LEAVE TO FILE EXCEPTIONS TO A REPORT AND RECOMMENDATION OF THE REVIEW BOARD OF THE ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION IN COMMISSION NO. 04 CH 79

Gregory B. Beggs
5100 Fairview Avenue.
Downers Grove, Illinois 60515
Telephone (630) 852-1280 Facsimile (630) 852-1283

Petitioner's Attorney

ORAL ARGUMENT IS REQUESTED

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Promissory Note 7-6-95

Check #6813 5-12-04 $12,628.00

Check Money Order 5-19-04 $1,705.24

Registered Mail Receipt

Check Money Order 5-19-04 $12,628.00

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In the
SUPREME COURT OF THE STATE OF ILLINOIS

In the Matter of) No.
KEVIN MICHAEL BRILL,) Commission No. 04 CH 79
Petitioner.)

CORRECTED PETITION FOR LEAVE TO FILE EXCEPTIONS TO A REPORT AND RECOMMENDATION OF THE REVIEW BOARD OF THE ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINEARY COMMISSION

IN COMMISSION NO. 04 CH 79

Request for Leave to File Exceptions, and Date of Review Board Report

Pursuant to Rule 753(e) of the Rules of this Court, petitioner, by and through his undersigned attorney, petitions for leave to file exceptions to a report and recommendation of the Review Board of the Illinois Attorney Registration and Disciplinary Commission filed February 15, 2007.

Attachment of Reports and Proposed Exceptions; Separate Appendix

A copy of the Review Board's report and recommendation is attached to this petition as Appendix 1, and a copy of the Hearing Board's report and recommendation filed September 13, 2005, is attached as Appendix 2. The two promissory notes in issue, previously before the Hearing Board and the Review Board in Commission No. 00 CH 34 and this Court in M.R. 18717, and now declared by the Hearing Board and the Review Board in the present case to be forgeries, are attached to this petition as Appendix 3 and Appendix 4. Also, all of petitioner's appendix materials are contained in seven Separate Appendix volumes accompanying this petition. Appendices 1 through 4 are repeated there. Petitioner's Proposed Exceptions are attached to this petition, immediately following Appendix Page A-44.

POINTS RELIED UPON

1. The Hearing Board lost jurisdiction once the issue of the notes' authenticity was transferred by Gloria Golden, the apparent promissor on the notes, from the Circuit Court of the 18th Judicial Circuit in DuPage County, Illinois to the United States Bankruptcy Court for the Eastern District of Michigan in Flint, Michigan. The Review Board erred in sustaining and affirming the actions of the Hearing Board which tried the authenticity of the notes despite the Bankruptcy Court's acceptance of Brill's standing to bring an Adversary Action in the Bankruptcy Court, ancillary to Ms. Golden's bankruptcy petition, and that Court's judgment refusing to give her a discharge.

28 U.S.C. 1334

Kalb et ux v. Feuerstein et ux, 308 U.S. 433, 60 S.Ct 343 (1940)

In re South Beardstown Drainage and Levee District, 125 F.2d 13 (7 Cir. 1941)

Cohen v. Salata et al, 303 Ill. App. 3d 1060, 709 N.E.2d 668, 237 Ill. Dec. 413 (1st Dist., 1999)

David Townsend v. Magic Graphics, Inc., 169 Ill. App. 3d 73, 523 N.E. 2d 208, 119 Ill. Dec. 740 (2d Dist., 1988).

2. Res judicata barred the ARDC, the Hearing Board and the Review Board from contesting the authenticity of the notes in 04 CH 79. Their authenticity was previously and expressly in issue before the Hearing Board and the Review Board in Commission No. 00 CH 34 and before this Court twice in M.R. 18717.

Supreme Court Rule 273

People v. Del Vecchio, 135 Ill. Dec. 816, 544 N.E. 2d 312, 129 I112d. 265 (Ill. 1989)

Leow v. A&B Freight Line, Inc., 175 Ill. 2d 176, 186 (1997)

DeLuna v. Treister, 185 Ill. 2d 565, 574 1999

3. The Hearing Board and the Review Board violated Supreme Court Rule 753(c)(6) by not requiring the ARDC tc prove its case against Brill by the standard of clear and convincing evidence which the Rule, and this Court, require. Specifically, the Hearing Board and the Review Board

a. found Brill, who testified that Ms. Golden signed the notes in his office on July 6, 1995, and Nancy Sandifur, Brill's sister, who unequivocally testified that she saw Ms. Golden signing papers in Brill's office that day, to be incredible.

b. found certain documented "prior inconsistent statements" by Brill to "overwhelmingly establish" that the notes were forgeries.

c. refused to admit evidence that the ARDC's forensic document examiner, who examined a variety of documents which the ARDC sent her (a) to compare with the Golden signatures on the promissory notes, and (b) to compare the signatures with a sample of Brill's handwriting, was unable to state that the signatures on the notes were not genuine.

d. allowed Brill's attorney who represented him through the Hearing in Brill I to testify despite Brill' refusal to waive the attorney-client privilege.

e. allowed Ms. Golden to testify without representation despite her omission of sums just received from Brill and the Client Protection Fund from her Bankruptcy

Schedules.

Supreme Court Rule 753(c)(6)

Bazydlo v. Volant, 164 Ill. 2d 207, 213 (1995)

f. incorrectly applied the standard of evidence needed to prove handwriting stated in 735 ILCS 5/8-1501-03.

* * *

CONCLUSION

The Hearing Board and the Review Board have pursued Brill assiduously, as has the ARDC. But this case, Brill III, should never have started, or been continued after Ms. Golden filed for Bankruptcy in Michigan. Even when the Hearing went forward, the prosecution and the Board made prejudicial mistakes. The Hearing Board and the Review Board should be reversed. Petitioner respectfully requests that leave to file his exceptions be granted.

Respectfully submitted,

/s/______________

Gregory Beggs
5100 Fairview Avenue
Downers Grove, Illinois 60515
Telephone (630) 852-1280
Facsimile (630) 852-1283
Petitioner's Attorney

I certify that this brief conforms to the requirements of Rules 34(a) and (b). The length of this brief, excluding the appendix but including the appended Proposed Exceptions is 43 pages.

/s/______________

Gregory B. Beggs

U.S. Bankruptcy Court
EASTERN DISTRICT OF MICHIGAN (Flint)

Bankruptcy Petition #: 04-32501 6/14/04

Walter Shapero. FLINT

voluntary individual no asset

GLOURIOUS S GREER-TUCKER
3319 Forest Hill
Flint, MI 48504
SSN: 494-48-2255
* Debtor *

* Attorneys *

Carl J. Schoemer
Legal Services of Eastern Michigan
436 S. Saginaw St'.
Flint, MI 48502
810-234-2621

SAMUEL D. SWEET
P.O. Box 757
Nortonville, MI 48462-0757
* Trustee *

Proceedings include events between 1/1/31 and 1/28/05.

6/14/04 1 Voluntary Petition all schedules and statements. (Filing Fee $ 209.00 Receipt # 63818) (cfry) [EOD 06/16/041 [04-32501]

6/14/04 2 Bankruptcy Petition Cover Sheet. (cfry) [EOD 06/16/041 [04-32501]

6/14/04. -- Statement of Social Security Number Submitted. (cfry) [EOD 06/16/04] [04-32501]

6/17/04 -- Appointment of Trustee, Samuel Sweet (cfry) [EOD 06/17/04 [04-32501]

6/17/04 3 First Meeting of Creditors Scheduled for 2:00 7/15/04 at Thompson-Dexel.Bldg.- Flint Last Day To Oppose Discharge:
9/13/04 (cfry) [EOD 06/17/041 [04-32501]

6/19/04 4 Court's BNC Certificate of Service Re: [3-1] First Meeting # of Notices: 21 were sent out. (auto) [EOD 06/22/04] [04-32501]

7/04 5 First Meeting Held and Examination of Debtor. (cfry) [EOD 07/23/04] [04-32501]

Proceedings include events. between 1/1/31 and 1/28/05.
In re: Glourious S. Greer-Tucker

9/23/.04 6 Chapter 7 Trustee's Report of No Assets. (cfry) [EOD 07/27/04] [04-32501]

9/13/04 -- Complaint (04-3153) Kevin M. Brill vs. Glorious Greer-Tucker . NOS 424 Objection To Discharge (727)
Filing Fee $ 150.00 Receipt # 65346) (cfry) [EOD 09/14/04] [04-3153]

I hereby certify that the foregoing is a true copy of the original on file in this office.

CLERK U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN

BY____________:

/s/ Deputy Clerk:

DATE: 1/28/05

U.S. Bankruptcy Court
EASTERN DISTRICT OF MICHIGAN (Flint)
Adversary Proceeding #: 04-3153

Date filed: 9/13/04
Assigned to: Walter Shapero. FLINT 11
Related Bankruptcy Case #: 04-32501
In Re: Glourious S. Greer-Tucker,
Demand: $0,000

KEVIN M. BRILL .
P. O. Box 77
Downers Grove, IL 60515-0077
Plaintiff

GLORIOUS GREER-TUCKER
Defendant

I hereby certify that the foregoing is a true copy of the original on file in this Office.

CLERK U.S. BANKRUPTCY COURT

EASTERN DISTRICT OF MICHIGAN

BY____________:

/s/ Deputy Clerk:

DATE: 1/28/05

Proceedings include events between 1/1/31 and 1/28/05.

Kevin M. Brill v. Glorious Greer-Tucker

1/10,/04 1 Complaint (04-3153) Kevin M. Brill vs. Glorious Greer-Tucker . NOS 424 Objection To Discharge (727) Filing Fee $ 150.00 Receipt.# 65346) (cfry) [EOD 09/14/041 [04-3153]

1/27/04 2 Summons Served 9/23/04 on Glorious Greer-Tucker. (cfry) [EOD 09/29/041 [04-3153]

1/22/04 3 Clerk's entry of default as to Glorious Greer-Tucker (cfry) [EOD 11/24/041 [04-31531

1/10/04 4 Application Filed By Plaintiff Kevin M. Brill For Default Judgment (cfry) [EOD 12/12/041 [04-3153]

/10/04 5 Brief/Memorandum By Plaintiff Kevin M. Brill In Support Of [4-1] Application.For Default Judgment by Kevin M. Brill (cfry) [EOD 12/12/04] [04-3153]

/14/05 6 Hearing Re: [4-1] Application For Default Judgment by Kevin M. Brill Scheduled For 10:00 1/19/05 at U.S. Bk Courtroom, Flint (cfry) [EOD 01/20/051 [04-3153]

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In the Matter of:

GLORIOUS GREER-TUCKER

CaseNo:..04-32501

KEVIN M. BRILL

Debtor(s). Adv. Case No. 04-3153

v.

GLORIUS GREER TRUCKER

Defendant(s).

DEFAULT ENTRY BY CLERK

It appears from the records in the above-entitled proceeding that a summons has been served upon the defendant named below and that the defendant has failed to timely plead or otherwise defend in said proceeding as directed in said summons and as provided in the Federal Rules of Bankruptcy Procedure.

Now, therefore, pursuant to Fed. R. Bankr. P. 7055 the DEFAULT of the following is hereby entered.

GLORIOUS GREER TUCKER

The plaintiff shall file an application for default judgment, pursuant to L.B.R. 7055-1 within 15 days from the entry of this default. Applications for default judgment shall be accompanied by the affidavit required under the Servicemember's Civil Relief Act of 2003.

If the plaintiff fails to file the application for default within 30-days from the entry of this default, the complaint may be dismissed without a hearing.

____

/s/ Terri Scoble,

Divisional Supervisor

United States Bankruptcy Court

I hereby certify that the foregoing is a true copy of the original on file in this Office.

CLERK U.S. BANKRUPTCY COURT

EASTERN DISTRICT OF MICHIGAN

BY____________:

/s/ Deputy Clerk:

DATE: 1/28/05

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT’ OF MICHIGAN
SOUTHERN DIVISION

’IN THE MATTER OF ,	Case No. 04-32501
GLOURIOUS S. GREER-TUCKER	

KEVIN M. BRILL,	Adversary No. 04-3153
Plaintiff,	Flint, Michigan
v.	
GLOURIOUS GREER-TUCKER	January 19, 2005
defendant.	10:32 am

APPLICATION FOR DEFAULT JUDGMENT BY KEVIN M. BRILL BEFORE THE HONORABLE WALTER SHAPERO

TRANSCRIPT ORDERED BY : KEVIN BRILL, ESQ.

APPEARANCES

For the Plaintiff:	KEVIN BRILL, ESQ. P. O. Box 77 Downers Grove, IL 60515 630-915-3128
Court Recorder:	Pamela Skillman
Transcriber:	Deborah Kremlick

Exhibits		ID	ADM
PX1	Promissory Note 7-6--95	14	14
PX2	Promissory Note 7-6-95	14	14
PX3	Check #6813 5-12-04 $12,628.00	14	14
PX4	Check Money Order: 5-19-04 $1705.24	14	14
PX5	Registered Mail Receipt	14	14
PX6	Check Money Order 5-19-04 $12,628.00	14	14

PX7	Complaint, DuPage County, Illinois	14	14
PX8	Certified Return of Service	14	14
PX9	Copies of Schedules	14	14
PX10	Complaint Cover Sheet	14	14
PX11	Certification of Service	14	14
PX8	Default Entry	14	14

(Court in Session)

THE CLERK: Case number 04--3153, Kevin Brill versus Glourious Greer-Tucker.

MR. BRILL: Good morning, Your Honor. I'm Kevin. Brill.

Judge, I filed an fled an adversary objecting to -- yes, yes.

THE COURT: Yes, we're here today because of my request for proofs

MR. BRILL: Yes, sir.. And I have them. I have proofs for you. I submitted a prior certificate. I have underlying documents I -- I'm ready to proceed any way you would like, Your Honor.

THE COURT: Well, tell me what you --

MR. BRILL: I would make an offer --

THE COURT: This is a default judgment. I normally, depending on the situation, require some sort of proof in -- in.-- to reinforce the complaint. This is a 727 case, correct?,

MR. BRILL: Yes, sir.

THE COURT: And the grounds for objection to discharge are as -- are what?

MR. BRILL: That the scheduling of myself was to hinder, delay, or defraud me on her.schedules is a disputed matter. She knew it wasn't disputed.

Then she received $14,333.38 between May 9th and June 17th. The filing was June 13th, so both prior to and immediately after the filing she received large sums of money. The sums of money were not scheduled.

In addition she had a motorized vehicle, a 1997 Chevy van and that Chevy van was not scheduled, Also on information and belief, Your Honor, the trustee gave a no asset report and I'm sure the trustee would not have given a no asset report if knowing that these funds had been received.

I have - -

THE COURT: What -

MR. BRILL: I'm sorry.

THE COURT: What information do you have on what you claim to be true?

MR. BRILL: Well, yes, sir, 1 do. And I am -- and I would make an offer of proof or submit to your whatever you wish, judge. I have two promissory notes executed by the debtor.

THE COURT:. That gave rise.to your -

MR. BRILL: My indebtedness.

THE COURT: Your indebtedness, all right.

MR. BRILL: Promissory notes are --- one's in the amount of $14,192.25 and it was executed July 6th, 1995. And the other is in the amount of $1,205 and was executed July 6th, 1995.

In the body of the notes both Ms. Golden consented to the withdrawal of $14,000 from my, client's trust account to apply to fees that she admitted owing me in these notes..

THE COURT: And so you represented her?

MR. BRILL: I'm sorry?

THE COURT: You represented her?

MR. BRILL: I represented her in about seven matters, including about three after this matter.

THE COURT: All right. And you were her attorney then?

MR.. BRILL: Yes, I was.

THE COURT: All right. And these notes were given in partial payment, or payment of attorney fees?

MR. BRILL: And in consideration of past due fees. I - - a huge amount of time. She had a multiple tens of thousands claim against the Internal Revenue Service. I litigated the validity of the claim in Bankruptcy Court in Illinois.

There was a settlement for $12,000.She had a home that was deeply in arrears, had been foreclosed on. Ultimately the -- the home was sold, some equity was preserved. The Court approved a sale free and clear of liens and allowed some funds for myself.

THE COURT: All right. As of the date and time -- and time of filing, of this bankruptcy, you were entitled to how much? Or the balance of your indebtedness was what?

MR. BRILL: Well, Judge, that goes to the next item I have which is a complaint I filed against Ms. Golden in the Circuit Court of DuPage County, Illinois. And the complaint, which I also have my copy of Judge, and a copy for you, complaint.

I had two counts. One on the first note which was in 14,192.25 with the unpaid interest for a decade and it was 57,445.02. That was simple interest and it was not compounded at all..

THE COURT: When -- did you get a judgment in Illinois?

MR. BRILL: I got a default, Judge.

THE COURT: Yes. And how much was -- how much was that and what was the date?

MR, BRILL: Judge, we had made a motion. We filed a -- I'm sorry. I have a certified return of service, Ms. Golden was served on the 27th day of April.

THE COURT: in -- in Illinois?

MR.. BRILL: In 2004.

THE COURT: All right.

MR.. BRILL: She by Illinois law, she had to have responded by May 27th. My -- my attorney filed a motion for approval of and an affidavit and entry of a default judgment. And Ms. Golden intervened by filing this bankruptcy.

THE, COURT: On June 14th?

MR. BRILL; Yes. Prior to the entry of the judgement.

THE COURT: All right. Was it - was it - Was there an Illinois bankruptcy ever of this debtor?

MR.. BRILL: Yes, but none that she received discharge on.

THE COURT: All right. When did that occur?

MR. BRILL: Okay. I represented her in six Chapter 13's, two of which were confirmed, none of which went to discharge.

THE COURT: All under -- all in --

MR. BRILL: Northern District of Illinois.

THE COURT: Northern District, all right.

MR. BRILL: Yes. I don't mean to be confusing. I hope I'm answering your questions correctly, sir.

THE COURT : So far you are, that's fine.

MR. BRILL: And I answered -- and I responded and represented her in a foreclosure in the State Court chancery matter pending in the DuPage County Circuit Court..

THE COURT: All right. Now under what -- under what section of 727 are you proceeding?

MR BRILL: Well, Judge, she fraudulently concealed the assets to the detriment of myself and every other creditor.

THE COURT : Okay,

MR. BRILL: And she failed to schedule me correctly.

THE C:OURT: All right. What assets did she fail to schedule or otherwise conceal'?

MR. BRILL. Okay. The -- Ms. Golden received a check on -- dated May 9th in the amount of - -

THE COURT: 2004?

MR. BRILL: I'm sorry?

THE COURT: 2004?

MR. BRILL: yes.

THE COURT. All right.

. MR. BRILL: I was looking for the amount, I should have said the date, I apologize.. On -- dated May 12th of 2004 in the amount of $12,628.

THE COURT: All right.

MR. BRILL: Her filing was on June 14th. She did not schedule the receipt of that funds. Then I -

THE COURT: Where would she -- the funds did not appear on the schedules?

MR. BRILL: They do not

THE COURT : All right.

MR. BRILL: And. I have a copy of her schedules with me also as a matter of -- of the proof, Judge.

THE COURT: All right, Do you know whether or not she had expended the funds before the --- the filing?

MR. BRILL: I don't know what -- I don't know what she did with them, Judge, but she received them.

THE COURT : All right.

MR. BRILL: And if she transferred them or expended them, she should have listed them.

THE COURT: In the statement of financial affairs.

MR. BRILL: Absolutely which she did not.

THE COURT: All right, all right. Second item.

MR.. BRILL: Then I sent her by certified mail, return receipt requested which she received on June 17th, '04, a cashier's check for the amount of $1,705.24.

THE COURT: What was that for?

MR. BRILL: That was the balance of the 14,333 she received the 12,628. I reimbursed the payer of the 12,628 and I also sent her on the additional 1,705.24.

THE COURT: So at the time of the filing she was owed this money'?

MR. BRILL: Yes.

THE COURT: Did she state that on the schedules as a receivable?

MR. BRILL: No, she did not.

THE COURT: All right, all right.

MR. BRILL:. Nor did she state that she transferred the funds, nor did she state that she had them. That was received by her three or four days after the filing which was the amount of 1,705.24.

THE COURT : Thank you.

MR. BRILL: And that amount was required to be amended to be shown as - as a asset received after the filing. No amendment was filed and as of last Friday no amendment has been filed.

THE COURT : Thank you. Any other items she concealed or failed to list?

MR, BRILL, : Well, she has a vehicle. She has a 1997 Chevy Ventura van by her own admission. She's going to continue to pay on it, but not reaffirm on it, but she didn't schedule it.

THE COURT: And how do you know she owns that vehicle?

MR.. BRILL: Because she filed a statement that she intends to pay on it.

THE COURT: In this bankruptcy, or one of the ones in Illinois?

MR. PRILL: In this bankruptcy.

THE COURT: All right.

MR.. BRILL. In this bankruptcy, sir.

THE COUR'T': Was that vehicle listed in any other bankruptcies?

MR. BRILL: No. She didn't have them, back in the ninety -- mid '96, '97 time. This was, I'm sure, used vehicle that she purchased when she came here.

THE COURT: She moved to Michigan presumably at some point?

MR. BRILL: Yes.

THE COURT: When was that?

MR. BRILL: In 1995 she told me to dismiss her pending Chapter 13, not defend the trustee's motion to dismiss it because she was going to move to Flint, Michigan and -- and felt -- she told me that the United States Internal Revenue Service would not be able to find her here. Subsequently I filed two subsequent cases in 1997 -- or '96 for her while she still resided in Illinois, Both were to remove garnishments from her -

THE COURT: Do you know when she moved to Flint?

MR- BRILL: After 1996.

THE COURT: All right. But before she filed in 2004?

MR. BRILL: Yes.

THE COURT: When you were communicating with her in that interval, where did you communicate with her? In Flint, Illinois?

MR. BRILL: Eventually around 1999, I got an address for her in Flint. That is not the current address. After I filed my lawauit in DuPage County, Illinois and served her, she sent a notice that she had moved to another place, the current scheduled addresss.

THE COURT: In Flint. All right.

MR. BRILL: I'm sorry, Judge. She moves, She dodges.Now after --

THE COURT: So the items you refer to are the basis for your 727 position, correct?

MR. BRILL: Yes. And her -- her schedules do not reveal the monies that we've discussed or the vehicle. I filed my complaint on Spetember 13th. I filed my certification of service that her, her attorney, and the trustee were served with my complaint. That was filed in this court on September 27th after having been served on September 23rd.

October rolled around, no response. November rolled around and the Court entered a default. I then submitted -- made a submission to the Court and the Court entered a memo order -- an order memo, excuse me, on December 23rd not entering my proposed order as the Court wanted to hear positive proof.

THE COURT: Here's what I'd like --

MR. BRILL: We scheduled this to do that and Judge, I -- if I could for one second, I would make an offer of proof that I have in my possesssion and -- the documents I just stated and if I would run through the 12 of them and just list them on record.

THE COURT: What I 'd like to you have you do is step over to -- and have the documents marked, simply marked as exhibits, right --

MR. BRILL: Yes, I can -- I'd be happy to -- I'm --

THE COURT: Do that right now if you would.

MR. BRILL: Judge, I would make an offer of proof that Exhibits 1 through 12 --

THE COURT: Just have them -- just have them marked first if -- if you would.

MR. BRILL: Yes sir. I 'm sorry, I misunderstood.

THE COURT: And then we'll -- you'll come back on the record and I'll deal with the admission of the documents and tell you what I'm going to do. So let's just do this in an orderly fashion.

MR. BRILL: No. And that's fine, Judge, I misunderstood. I thought you wanted my offer to amend the exhibits.

THE COURT: No, that's not necessary, just step over and have it marked.

MR. BRILL: Okay. Judge, if I may. They are marked 1 through-12.

THE COURT: Yes. if you'd go back to the podium, Mr. Brill, I'll just -- would you please list the exhibits you wish to introduce? Just make a shorthand reference to exhibit number and what it is on the record, please.

MR. BRILL: Exhibit 1 is a promissory note. Exhibit 2 is another promissory note. Exhibit 3 is a check payable to Glourious Tucker, the debtor herein. Exhibit 4 is a check payable to Glourious Tucker, the debtor herein from myself. Exhibit 5 is a copy of a certified mail receipt return signed by Glourious Tucker. Exhibit 6 is a check in the -- in the amount of 12,682 payable by me. Exhibit 7 is a complaint with exhibits brought in the Court in DuPage County against the debtor herein. Exhibit 8 is a certified return of service that Ms. Golden was -- Ms. Tucker was served. Exhibit 9 is a copy of her schedules filed by the debtor.

THE COURT: In this case?

MR. BRILL: In this case. Exhibit 10 is the cover sheet and the complaint objecting to discharge of the debtor Glourious Greer-Tucker filed by me on September 13th. Exhibit 11 is a copy of the certification of service filed with the Court clerk on September 27th and exceuted and sent on September 23rd, '04 in this case. And exhibit 12 is the deafult entry by the clerk in this adversarial matter.

(Plaintiff's Exhibits 1-12 were identified and admitted)

THE COURT: Would you hand them up to me for a moment, please?

MR. BRILL: Yes, sir.

THE COURT:Yes.

MR. BRILL: Yes, sir.

THB COURT; Thank you. To the best of your knowledge is debtor -- is or is not the debtor in the Military?

MR. BRILL: Judge, I checked with, if you'll -- may I --

THE COURT: I have your certification which is a little bit ambiguous on the subject.

MR. BRILL: I'm sorry about that, Judge. I - I was dumber then. I didn't know as much.

THE COURT: Well, if you're dumber then, are you smarter now?

MR. BRILL: I have -- I'm a little smarter.

THE COURT: All right. And tell me -?

MR. BRILL: And I checked my files and as late as 1996 Ms. Golden certified to me in my files that she had never been a member of the military, I then checked with the United States Department of Defense, Department of Manpower Data at 1600 Wilson, Suite 400 in Arlington, Virginia and Director Shefflin upon viewing her Social Security number, which I had from prior filings and documents I had, asserted to me that she was not at any time in the military,

THE COURT: All right. And did you -- when did you do that?

MR. BRILL: I was -- I start -- I did my first inquiry on 1-13-04 and I completed the inquiry on 1-18-04 which was yesterday.

THE COURT: '05?

MR. BRILL: I'm sorry, '05. I don" t even know what year it is, Judge, but it's `05, yesterday `05.

THE COURT: All right. That, I think, adequately augments your prior certification.

Based on the exhibits and your statements and the files on record of the Court, I'm going to give -- grant you the judgment you pray for, but not in the form that you have presented. I'm going to permit -- I'm going to grant you a judgment under 727 (a) (2) (4) and (5) because I think the facts that have been set forth warrant it.

Your judgment; however, goes way beyond that kind of thing. So the appropriate judgment is simply a judgment of non-dischargeability under the indicated sections. In the judgment that you have proffered, you have a lot of affirmative orders which are inappropriate in a situation. of this kind.

Like the trutee shall administer assets and the debtor shall turn aver the things that you have talked about and certain, other things. But - -

MR, BRILL: Judge, you know, it was ignorance of your procedures, I don't know what you would do.

THE COURT : Right. You're going to get a judgment of non-dischargeability. I'm not going to -- and I'm not going to find the amount due either. I don't do that. I simply find whatever the indebtedness to you is, it's non-dischargeable.

It -- we're not dealing with your particular debt here anyway. We are dealing with simply a 727 discharge so nobody's debt is discharged in essence. So I`m not going to enter a money judgment or determine the amount of your particular claim or anything else.

You want to file -- you want to -- if there are assets collected here and you want -- you'll have to prove your claim like everybody else subject to the standing trustee's objection to any such claim. So simply a simple straightforward judgment that say you appeared, that you presented proofs and exhibits and based on the proof's and exhibits and the files and records of the Court, the Court determines that a judgment for non-dischargeability under the indicated sections of 727 is appropriate. Something along those lines and I'll sign that judgment, but nothing more.

MR, BRILL: Judge, If I may. All the points you said are well taken, but there was several findings of fact that I think are -- - the Court needs to make to -- as a predicate. Among them that the debtor executed the notes and I'm in debt- -- she's indebted to me, I have standing. If I could have those findings of facts, I'll be happy to strike out all the other matters because I -- I do believe I've proven --

THE COURT : And I'm saying you have.

MR. BRILL: And -- and so if I could have a finding of fact as to that, I will sit down and strike out everything and submit it and maybe perhaps --

THE COURT: Well, if you can -- if you can comply with what I've said and use the order that you proffered by way of changing it or altering it, that's --

MR. BRILL: I hope to offer either delineation on it so that I can strike out the offending passages.

THE COURT : Right. And, get it done.

MR. BRILL: I will -- if you don't mind, Judge, I'll sit in your conference roam and go do it.

THE COURT: Don't mind a bit. Just want it to be in the shape that I like.

MR. BRILL: Well, absolutely, I want to please the Court.

THE COURT: So, I'll, return your exhibits you have -- to you and -- and the judgment you proffered as well.

MR. BRILL: I will mark up the judgment. I don't know how long the Court sits today.

THE COURT: I'll be here all day.

MR. BRILL: Well, then I will submit it before I leave so that it can be done, Judge. Thank you very much.

THE COURT : You're welcome.

MR. BRILL: And I appreciate your time in listening to this -

THE COURT: You're welcome.

(Court Adjourned at 11:01 a.m.)

1 certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Deborah L. Kremlick

Dated: 1-28-05

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OP MICHIGAN
SOUTHERN DIVISION - FLINT

In re:

GLORIOUS GREER-TUCKER,	Case No. 04-32501 Chapter 7
Debtor.	Hon. Walter Shapero
KEVIN M. BRILL,	
Plaintiff	Adv. Pro. Case No. 04-3153
GLORIOUS GREER-TUCKER,	
Defendant,	

OPINION GRANTING DEFAULT JUDGMENT DENYING DISCHARGE

This Chapter 7 bankruptcy including the schedules and statement of affairs was filed on June 14,2004. Plaintiff timely filed a Complaint under 11 U.S.C. §727 objecting to debtor's discharge on the grounds that Defendant debtor intentionally failed to disclose the existence or receipt of certain assets, namely (1) monies received by the debtor on or about or soon after May 12, 2004, in the amount of $12,628.00, and (2) monies received by the debtor on or about June 17, 2004 in the amount of $1705,24; and (3) a Chevrolet van.

Defendant failed to file an answer to the Complaint, and her default was entered. The Court thereafter held a hearing on the Plaintiff's request for a default judgment.

Parenthetically, though it was not asserted in the Complaint as part of the grounds for the relief sought, the Court file reveals by way of the required cover sheet actually signed and filed in this case, (setting forth certain information with respect to any prior bankruptcies debtor has filed in this district "or any other district") that debtor stated there had been no such prior bankruptcies. At the hearing on the default judgment, the Plaintiff stated to the Court that he had represented the debtor in connection with six Chapter 13 bankruptcies in the Northern District of Illinois), two of which were confirmed and none of which went to discharge. That would indicate that debtor's cover sheet contained a material false statement.

The evidence further adduced at the hearing through Plaintiff, appearing in pro per, follows. As to the referred to $12,628, Exhibit 3 is a cashiers check in that amount dated May 12, 2004 issued by the Illinois Attorney Registration and Disciplinary Commission from its account at the Lasalle Bank payable to Debtor. Debtor's schedules, signed June 9, 2004, show no cash on hand, $12.00 in a savings account, and no other assets of any kind whatsoever, except for household goods and furnishings worth $500 and apparel worth $100. The Statement of Financial affairs lists no income received within the two years preceding the filing, other than unemployment and baby sitting in 2002 and 2003. It lists no payments to creditors within one year prior to filing, and denies the existence or pendency of any suit or administrative proceeding, within one year preceding the filing, other than two suits for credit card debt and one (brought by Plaintiff in this adversary proceeding) for attorney fees. It also denies the existence of any transfers of property, other than in the ordinary course of business within one year of the commencement of the case. Exhibit 6 is a cashiers check for $12,628 dated May 19, 2004 payable to "ARDC Client Protection"; "re Brill", (ARDC standing for the Illinois Attorney Registration Commission) drawn on the same Bank as the check payable to Debtor.

As to the referred to $1705,24, Exhibit 4 is a cashiers check dated May 19, 2004 payable to debtor "re Brill" drawn on the same Bank as Exhibit 6, that Bank being the MidAmerica Bank.

As to the Chevrolet vehicle, while it is not listed as an asset on Schedule B., nor exempted on Schedule C, there is listed on Schedule D a secured debt of $2,600 in relation to that vehicle, "incurred March 8, 2004", as an "automobile purchase." Debtor filed a Statement of Intention describing that vehicle stating the debtor wished to retain it and continue to make payments on it.

The recited evidence permits the inference and conclusion that the $12,628 was received about 30 days prior to the filing or less. If it had not been spent or transferred prior to the filing debtor failed to include its possession on the schedules. If it was spent or transferred in whole or in part prior to filing, that fact was not revealed in in the Statement of Financial Affairs as it should have been. Apparently the debtor had some sort of claim against the Plaintiff, which because the subject of some proceeding involving the Plaintiff before the Illinois Attorney Registration and Disciplinary Commission, which made the indicated payment to the debtor as a consequence of the pendency or disposition of those proceedings. It would also appear that the $1705.28 is in the same category. Given this Chapter 7 case is a "no asset" case, and debtor lists unsecured priority tax debts of $1058 and unsecured debts of $75,753 (of which $57,445.02 is listed as a debt owing to Plaintiff for attorney fees) one must conclude, given among other things, the debtor's failure to answer the Complaint and her apparent failure to make any attempt to amend her schedules or Statement of Affairs, after the Complaint in this procceding was filed and served, that the Plaintiff has made a sufficient showing to permit the entry of a default judgment denying her discharge under 727(a)(4)(A), in that the items involved are material and the debtor having made the indicated false statements as to the $12,623 and $1,705.24, under circumstances which permit the conclusion that such were both knowingly and fraudulently made. However, no such conclusion can be drawn from the facts relating to the Chevrolet vehicle, the possession and ownership of which was disclosed by debtor in the schedules, albeit not in all the proper places.

During the course of the hearing on the default judgment, Plaintiff also introduced or attempted to introduce evidence to support the existence and amount of his claim against the debtor in the bankruptcy case (which debtor listed on her schedules), At the conclusion of the hearing he presented a proposed order contaning various findings of fact and conclusions of law with respect to that specific matter. Plaintiff misunderstands the nature and parameters of this particular adversary proceeding, and the Court wishes to make the following very clear and to have it understood in connection with its ruling. The matter of the amount, if any, or validity of Plaintiff s claim is properly the subject of some other proceeding in some appropriate Court. This Court makes no finding and comes to no conclusion whatsoever as to the existence or validity or enforceability of any debt or claim that Plaintiff alleges is owed to him by the debtor, or any defense that the debtor maybe entitled to assert in connection therewith. The only relevance or significance of any claim that Plaintiff asserts against debtor is that such has given him the colorable unopposed standing to pursue this adversary proceeding.

The judgment of this Court therefore is, and only is, that the debtor is denied a discharge in this bankruptcy case for the stated reasons. An Order to that effect is being contemporaneously entered.

/s/ WALTER SHAPERO

U.S. BANKRUPTCY JUDGE

cc:

Debtor
Debtor's attorney
Plaintiff
Samucl Sweet, Chapter 7 Trustee

CERTIFIED RETURN OF SERVICE

State of Illinois County of Du Page Circuit Court Court

Case Number: 2004L000403

Plaintiff:

KEVIN M BRILL DBA KEVIN M BRILL AND ASS

vs.

Defendant:

GLORIA GOLDEN AKA GLORIOUS GOLDEN AKA GLORIA TUCKER' AKA GLORIA SWANSON GRIER TUCKER

For.

Michael Edgerton
EDGERTON AND EDGERTON
125 Wood St Po Box 218
West Chicago, IL 60186

Received by DENNIS ALLEN PROCESS SERVERS to be served on **GLORIA GOLDEN 3319 FLOREST HILL AV FLINT MI 48504.**

I, Denny Herron, being duly sworn, depose and say that on the 27th day of April, 2004 at 9:35 am, 1:

PERSONALLY SERVED the within named person with a true copy of this **SUMMONS- COMPLAINT BREACH OF CONTRACT-PROMISSORY NOTES-ATTACHMENTS** with the date and hour endorsed thereon by me, pursuant to State Statutes.

I certify that I am over the age of 18, have no interest in the above action, and am a Process Server, in good standing, in the judicial court in which the process was served.

/s/ Denny Herron

DEPUTY SHERIFF

Subscribed and Sworn to before me on the 28th day of April, 2004 by the affiant who is personally known to me.

/s/ Kay Bradley

Notary Public

DENNIS ALLEN PROCESS SERVERS 3034 S. Ballenger Hwy,
Flint, MI 48507
(810) 239-7788
Our Job Serial Number: 2004004893
Service Fee: $43.50

STATE OF ILLINOIS)
) ss.
COUNTY OF DUPAGE)

IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT DUPAGE COUNTY, ILLINOIS

KEVIN M. BRILL, d/b/a Kevin M. Brill
and Associates
Plaintiff(s),
V. No.
GLORIA GOLDEN a/k/a Glorious Golden;
a/k/a Glorious Tucker, a/k/a Gloria Swanson
Grier Tucker,
Defendant(s).

COMPLAINT

BREACH OF CONTRACT - PROMISSORY NOTES

Now comes the PLAINTIFF, KEVIN M. BRILL, d/b/a Kevin M. Brill and Associates, through his attorneys EDGERTON & EDGERTON, complaining of DEFENDANT, GLORIA GOLDEN a/k/a Glorious Golden, a/k/a Glorious Tucker, a/k/a Gloria Swanson Grier Tucker,states as follows:

ALLEGATIONS COMMON TO ALL COUNTS

1. The PLAINTIFF is KEVIN M. BRILL d/b/a Kevin M. Brill and Associates, an individual, with his office and principal place of business located at 4520 Washington St. - P.O. Box 9083, Downers Grove, IL 60515.

2. The DEFENDANT is GLORIA GOLDEN a/k/a Glorious Golden, a/k/a Glorious Tucker, a/k/a Gloria Swanson Grier Tucker, an individual who at all relevant times resided in DuPage County, Illinois and now resides at 801 East Bundy Avenue, Flint, Michigan 48501.

3. On or before July 6, 1995, the DEFENDANT engaged PLAINTIFF to perform legal services for DEFENDANT for multiple matters pending in the Eighteenth Judicial Circuit, DuPage County, and the United States Bankruptcy Court, Northern District of Illinois, Eastern Division.

4. The PLAINTIFF rendered the professional legal services to DEFENDANT.

COUNT I - BREACH OF $14,192.25 PROMISSORY NOTE

1-4. PLAINTIFF repeats and realleges paragraphs 1-4 of ALLEGATIONS COMMON TO ALL COUNTS of the Complaint as paragraphs 1-4 of COUNT I as though fully set out.

5. As consideration for the professional legal services and forbearance of demanding immediate payment of the entire sum owed PLAINTIFF, on or about July 6, 1995, the DEFENDANT executed and delivered, a "Promissory Note" to the PLAINTIFF promising to pay PLAINTIFF $14,192.25 plus interest on payments at a rate of Three Percent (3 %) per month (i.e. Thirty-Six Percent (36 %) per annum) interest on the unpaid balance in installments as follows: payment of $300.00 per month commencing 8/1/1995. See PLAINTIFF's EXHIBIT GROUP "A" attached hereto and made a part hereof for a copy of the July 6, 1995 Promissory Note in the Principal Sum of $14,192.25.

6.. By and in the Promissory Note, the DEFENDANT agreed to pay "costs and attorney fees".

7. Pursuant to the Note, the DEFENDANT is default for failure to pay any sums due hereunder.

8. The DEFENDANT has failed and refused to pay

the sum required and is presently indebted to the PLAINTIFF in the amount of $57,445.02, after all setoffs (as of January, 2004), as follows:

What Owed and Due Date	**Amount**
Principal Balance Outstanding	$14,192.25
Interest - $14,192.25 * .03 = $425.77 per. month * 101 Months (i.e. 9/1995 through 1/2004):	43,002.77
Reasonable Attorneys' Fees:	250.00
TOTAL AMOUNT DEFENDANTS OWE TO PLAINTIFFS AS OF 2/2004:	$57,445.0

9. That the per diem amount equals $14.00 per day ($14,192.25 * .36 _ 365) or $425.77 per month.

10. The PLAINTIFF has frequently requested that the DEFENDANT pay the amounts due him, now in the total amount of $57,445.02, plus interest, which sum the DEFENDANT has failed and refused to pay.

11. PLAINTIFF has fully performed his obligations under the Note.

12. As a direct and proximate result of the DEFENDANT's breach of contract/note, PLAINTIFF has suffered damages in excess of $57,445.02, including but not limited to the repayment of principal, accrued interest, attorneys' fees, and court costs.

WHEREFORE, PLAINTIFF prays that this Court enter a judgment in favor of the PLAINTIFFS and against the DEFENDANTS in an amount of $57,445.02, as of January, 2004, plus $14.00 per diem accrued interest or $425.77 per month accrued interest (from 1/2004), court costs, plus reasonable attorneys fees of $250.00 to date plus additional accrued attorneys fees, and such other relief as this Court deems just and equitable.

COUNT I - BREACH OF $1,205.00 PROMISSORY NOTE

1-4. PLAINTIFF repeats and realleges paragraphs 1-4 of ALLEGATIONS COMMON TO ALL COUNTS of the Complaint as paragraphs 1-4 of COUNT I as though fully set out.

5. As consideration for the professional legal services and forbearance of demanding immediate payment of the entire sum owed PLAINTIFF, on or about July 6, 1995, the DEFENDANT, executed and delivered, a "Promissory Note" to the PLAINTIFF promising to pay PLAINTIFF $1,205.00 plus interest on payments at a rate of Three Percent (3 %) per month (i.e. Thirty-Six Percent (36%) per annum) interest on the unpaid balance in installments as follows: payment of $300.00 per month commencing 8/1/1995. See PLAINTIFF's EXHIBIT GROUP "B" attached hereto and made a part hereof for a copy of the July 6, 1995 Promissory Note in the Principal Sum of $1,205.00.

6. By and in the Promissory' Note, the DEFENDANT agreed to pay "costs and attorney fees".

7. Pursuant to the Note, the DEFENDANT is default for failure to pay any sums due hereunder.

8. The DEFENDANT has failed and refused to pay the sum required and is presently indebted to the PLAINTIFF in the amount of $5,106.15, after all setoffs (as of January, 2004), as follows:

What Owed and Due Date	Amount
Principal Balance Outstanding:	$1,205.00

Interest - $1,205.00 * .03 = $36.15 per month * 101 Months (i.e. 9/1995 through 1/2004):	3,651.15
Reasonable Attorneys' Fees:	250.00
TOTAL AMOUNT DEFENDANTS OWE TO PLAINTIFFS AS OF 2/2004:	$5,106.15

9. That the per diem amount equals $1.19 per day ($1,205.00 * .36 - 365) or $36.15 per month.

10. The PLAINTIFF has frequently requested that the DEFENDANT pay the amounts due him, now in the total amount of $5,106.15, plus interest, which sum the DEFENDANT has failed and refused to pay.

11. PLAINTIFF has fully performed his obligations under the Note.

12. As a direct and proximate result of the DEFENDANT's breach of contract/note, PLAINTIFF has suffered damages in excess of $5,106.15, including but not limited to the repayment of principal, accrued interest, attorneys' fees, and court costs.

WHEREFORE, PLAINTIFF prays that this Court enter a judgment in favor of the PLAINTIFFS and against the DEFENDANTS in an amount of $5,106.15, as of January, 2004, plus $1.19 per diem accrued interest or $36.15 per month accrued interest (from 1/2004), court costs, plus reasonable attorneys fees of $250.00 to date plus additional accrued attorneys fees, and such other relief as this Court deems just and equitable.

/s/KEVIN M. BRILL d/b/a Kevin M and Associates

Attorney for Plaintiff

VERIFICATION

The undersigned, being first duly sworn, on oath deposes and says that he/she/they is/are the PLAINTIFF(s) or agent thereof and has/have read the foregoing complaint by him/her/they subscribed, knows the contents thereof, and that the same is true in substance and in fact, except as to matter therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he/she/they verily believes the same to be true.

/s/ KEVIN M. BRILL d/b/a KEVIN M. BRILL

and Associates

SUBSCRIBED and SWORN p before me

this 3rd day of March 2004.

/s/ Alan Loiben

Notary Public

NOTARY PUBLIC, STATE OF ILLINOIS

EDGERTON & EDGERTON
125 Wood Street.,
P.O. Box 218 West Chicago, Illinois 60186-0218
Phone: (630) 231-3000
Atty No.: 24830

UNITED STATES OF AMERICA

STATE OF ILLINOIS COUNTY OF DUPAGE

**IN THE CIRCUIT COURT OF
THE 18TH JUDICIAL CIRCUIT**

KEVIN M. BRILL,

Plaintiff(s)

V. No.

GLORIA GOLDEN,

Defendant(s)

AFFIDAVIT OF DAMAGES

SUPREME COURT RULE 222

The undersigned being first duly sworn upon oath, deposes and states that he/she/they is/are part(ies) to the above entitled cause of action seeking money damages or collection of taxes and states that this cause of action:

[ ] does not exceed $50,000.00

[X] does exceed $50,000.00.

/s/ Plaintiff or its Authorized Agent

SUBSCRIBED and SWORN to before me

this 3rd day of March, 2004

/s/ Notary Public/Circuit Court Clerk

JOEL A. KAGANN CLERK OF THE 18TH JUDICIAL
CIRCUIT COURT

WHEATON IL 60189-0707

PROMISSORY NOTE

$14,192.25 Date: July 6, 1995

I promise to pay to the order of Kevin M. Brill and Associates, 53 W. Jackson Blvd., Suite 1741, Chicago, Illinois 60604 Fourteen thousand one hundred ninety two and 25/100 dollars with interest at 3% per month after this date until paid. Interest shall be waived if payment of the entire amount due is made when due. Payment shall be made in installments as follows: $300 per month commencing 8-1-95. Client acknowledges receipt of Brill's statement of services dated 7-6-05. Client approves said statement in the amount of $24,925.50. Client authorizes attorney Brill to withdraw $10,733.25 from his clients' trust account and apply said funds to the fees due on that statement. The balance above reflects deduction of $10,733.25. If default be made in the payment of any said installment, then all unpaid installments shall, at the option of Kevin M. Brill and Asssociates becomes immediately due and payable without notice or demand.

And to secure the payment of said amount, I hereby authorize, irrevocably, any attorney of any court of record, to appear for me in such court at any time after default and confess a judgment, without process,in favor of the holder of this note, for such amount as may appear to be unpaid thereon, together with costs and attorney fees, and to waive and release all errors which may intervene in any such judgment; hereby ratifying and confirming all that my said attorney may do by virtue hereof.

/s/Gloria J. Golden

Kevin M. Brill and Associates
53 West.Jackson Blvd., Suite 1741 Chicago, IL 60604
(312) 786-0105

PROMISSORY NOTE

$1,205.00 Date: July 6, 1995

I promise to pay to the order of Kevin M. Brill and Associates, 53 W. Jackson Blvd., Suite 1741, Chicago, Illinois 60604 One thousand two hundred five dollars with interest at 3% per month after this date until paid. Interest shall be waived if payment of the entire amount due is made when due. Payment shall be made in installments as follows: $300 per month commencing 8-1-95. Client is in the receipt of Brill's statement of services for 95 B 3365 in the amount of $4705.00 plus $250 cost. date 7-5-95. Client authorizes attorney Brill to withdraw $3500 plus $250 for costs from his clients' trust account and apply said funds to the fees due on the 7-5-95 statement. The balance above reflects deduction of $--. If default be made in the payment of any said installment, then all unpaid installments shall, at the option of Kevin M. Brill and Asssociates, becomes immediately due and payable without notice or demand.

And to secure the payment of said amount, I hereby authorize, irrevocably, any attorney of any court of record, to appear for me in such court at any time after default and confess a judgment, without process,in favor of the holder of this note, for such amount as may appear to be unpaid thereon, together with costs and attorney fees, and to waive and release all errors which may intervene in any such judgment; hereby ratifying and confirming all that my said attorney may do by virtue hereof.

/s/Gloria J. Golden

Kevin M. Brill and Associates
53 West.Jackson Blvd., Suite 1741 Chicago, IL 60604
(312) 786-0105

BEFORE THE REVIEW BOARD OF THE ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION

IN THE MATTER OF:)
)
KEVIN MICHAEL BRILL,) No. 00 CH 0034
) M.R. 18717
Respondent-Appellant,)
'No. 6182552)

PRESENTATION OF ORAL ARGUMENT had in the above-entitled matter, before the Review Board at the Attorney Registration & Disciplinary Commission at Suite 1100, One Prudential Plaza, 130 East Randolph Drive, Chicago, Illinois, on November 8, 2002, commencing at 9:00 o'clock a.m.

PRESENT:

MR. NEIL K. QUINN, Chairman
MR. MARTIN H. KATZ
MR. JAMES E. CALDWELL (Not Present this time and date)

Review Board Members;

MS. MARY ROBINSON, Administrator,
BY: MR.'STEVEN R. SPLITT

Appeared on behalf of the Administrator-Appellee;

MR. GREGORY B. BEGGS,
5100 Fairview Avenue
Downers Grove, Illinois 60515

Appeared on behalf of the Respondent-Appellant;

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* * *

And I'm right where Mr. Katz is right now. I'm left wondering if there ever was a fee agreement other than the word.

MR. BEGGS: What I think occurred was there were a group of documents, and I think Mr. Berkson referred to that group as Exhibit 1.

PANEL MEMBER KATZ: I don't see any group exhibit either. That's -

MR. BEGGS: There isn't a group exhibit. It comes out later at record, at about 276 I think.

PANEL MEMBER KATZ: Right.

MR. BEGGS: And at that point, the Chairman, Mr. Rolowick, was asking about one contract and another, and Mr. Brill was responding, and he was pointing to the pile of documents over on his table.

And the Chairman was asking for copies of those documents. This is, this is some distance away in the record and some time later after the ruling on the Exhibit 1 that we were just referring to, the '92 contract.

And then when Mr. Rolowick kept asking for copies of those, Mr. Verrando stood up and reminded Mr. Rolowick that these were a group of documents that he knew nothing about.

At that point, Mr. Rolowick said, "I don't want copies of anything that was not produced to the Administrator."

Now, there's a difference of opinion between Mr. Verrando about what production is because Mr. Verrando is referring to a subpoena and a deposition in the year 2000, and Mr. Brill was talking about he's already produced the documents in 1998.

But when the Chairman says, "I don't want copies of anything that was not produced," he is relying upon Mr. Verrando's position that the documents were not produced, and I might insert here again, at the 2000 deposition, at the year 2000 deposition.

So, coming to the answer to your question, it's my contention that the Chair had already ruled that he was not going to receive any documents which he felt were not produced in discovery.

And so when he said later, toward the end of the transcript, "I am not accepting copies of any documents that were not produced during discovery or to the Administrator," that's the ruling that incorporates these two promissory notes that we're talking about, that I'm talking about today and that Mr. Splitt is talking about.

And that's what this, the Appellee's brief is all about. That's what the Appellant's concern is all about.

And if I may, the reason the concern exists is in the notes, one attached to the end of the opening brief and one attached to the end of the reply brief, the notes say "Client authorizes Attorney Brill to withdraw," and then it states a sum, plus so and so "for costs from his client's trust account and apply said funds to the fees due."

And similarly, and the document -- I was reading just then from the document attached to the reply brief -- similarly, it, the document, the promissory note attached to the opening brief says, "Client authorizes Attorney Brill to withdraw," and then it.states a sum, "from his client's trust account and apply said funds to the fees due."

On that statement, she is referring to a statement a couple of sentences. earlier.

And I believe, when I look at the signatures on those two documents and then I also look at another signature which is in the record, it happens to be I'm looking at the Administrator's Exhibit 2, those signatures of Gloria Golden persuade me that the same person signed them.

I'm not a forensic expert, but I looked at those three signatures on the two notes that are attached to the briefs and the signature of Miss Golden on the Administrator's Exhibit 2, the first page, and I think they're the same person.

CHAIRMAN QUINN: Well, your comparisons are understandable, but that was not the basis for the denial of that document to be admitted into the hearing.

That is, the Board did not say, "This is an inauthentic document." They just simply said it was not produced, and we are not going to allow it to be produced at this late stage.

MR. BEGGS: And Mr. Chairman, that is the very point, that there the abuse of discretion occurred. And that's the ruling that we.'re disputing.

The only persons asked were Mr. Verrando, who wasn't there in '98, and Mr. Berkson, who wasn't there in '98.

The time that they were not produced, that the Chairman is referring to, is in response to the Notice of Deposition and subpoena roughly two years later, from between '98 and 2000.

I don't know. You know Mr. Brill said he produced them in '98. That may have to be tested, and it should have been tested, but the Chairman relied on a requirement for production two years after Mr. Brill initially produced them to the Commission. And -

CHAIRMAN QUINN: If --

MR. BEGGS: -- I don't know any rule that says you have to produce it again.

CHAIRMAN QUINN: I follow your argument.

Yours is a better argument that was made in the opening brief, which put us back to a discussion with respect to certain checks, an explanation, and that, clearly, to follow that conversation and to follow-up -- and the follow-up conversations did not lead anyone to believe that there was anything but the checks that were initially raised were being followed up on and not a totality of documents.

So for a moment, you have shifted the basis of your position, but go ahead.

MR. BEGGS: Well, what I want to be sure to try to impress upon you is that we all agree on how important these notes are.

We see that they exist. We have documents in front of us.

PANEL MEMBER KATZ: Let me ask you --

MR. BEGGS: Yes..

PANEL MEMBER KATZ: - Mr. Beggs, I gather from your argument that you're saying that these documents provided permission to Mr. Brill -?

MR. BEGGS: Yes.

PANEL MEMBER KATZ: -- to take the money.

MR. BEGGS: Yes. If true. I have got to insert that, too. But I believe they're true.

PANEL MEMBER KATZ: Well, I'm going to, well, for purposes of my question, I'm going to concede that they're true.

Okay. That being the case, are you conceding then that even with the bankruptcy court's order escrowing the $14,000, that Mr. Brill would have to get the permission of the client in order to get into the money that the bankruptcy court escrowed in June of '95?

MR. BEGGS: No, I'm not conceding that.

I think the most important thing for us to focus on is I think that the relief that should be accorded here is to send this case back to the Hearing Board or to whatever stage the legitimacy of these notes can be tested.

I'm not conceding the bankruptcy argument. I would disagree with you based upon the Kokkonen case, which is in 1994. It's a Supreme Court of the United States, and it's substantially subsequent to the rulings which the Administrator is relying upon.

And I'm not conceding the argument, but it's -a rather convoluted argument that the bank, 'I don't mean to --

PANEL MEMBER KATZ: I understand. I understand --

MR. BEGGS: -- characterize it, but it's harder.

PANEL MEMBER KATZ: -- that it's the

* * *

gave me any kind of statement."

So she is up there ostensibly begging for some correction. If he has these documents sitting on a table, and he goes and cross-examines her and never brings this document, how can it be that an attorney, hearing on -- at hearing on a conversion charge, would hear his client testify that she doesn't know what happened to this money and she didn't give him authority, and he has a document on the table that would absolutely contradict her, why wouldn't he go cross her with it? And he didn't.

CHAIRMAN QUINN: Trial errors are made day in and day out.

MR. SPLITT: My goodness, this is not a trial error.

CHAIRMAN QUINN: But the counsel -- but Mr. Beggs' argument today was don't let this case turn on a trial lawyer's mistake in judgment or a discovery ruling.

And the Court didn't say, I don't --I think this is an incompetent and fabricated document, and I don't believe it should ever go forward anyways.

MR. SPLITT: Well, it didn't --

CHAIRMAN QUINN: He's challenging it on discovery.

MR. SPLITT: Right. And the ruling is completely reasonable and within its discretion as a pure discovery ruling.

The Hearing Chair did not have to go past that to say what I think was probably going through everybody's mind at that time, which was that this is a phonied-up document.

There was enough, there was more than enough to rest the decision on the fact that this document was never produced in these hearing proceedings.

Whether it was produced in 1998, two years before the complaint was voted, is really a whole other story and it really is irrelevant.

CHAIRMAN QUINN: I'm intrigued with this proposition.

Experienced counsel is now in the case, and he's asking that the matter be remanded to determine the authenticity of this document.

If that were remanded, this case would move from one of suspension to one of disbarment, would you agree?

If in the event that the document were proved to be false.

MR. SPLITT: I would imagine that that would be true, yes, because that would be certainly lying to the Commissioner in investigatory procedures and is an ethical violation in and of itself and a strong -

CHAIRMAN QUINN: Throughout the whole process.

MR. SPLITT: Sure, sure. So if this were to be remanded -- and this should not be remanded. I mean, if you look at the U.S. or the Illinois Supreme Court's decision -

PANEL MEMBER KATZ.: I think what Mr. Quinn is saying is he's asking for relief of a remand, which if he loses, results in a disbarment, right?

MR. SPLITT: Right. I would think that would be correct.

PANEL MEMBER KATZ: I mean that is, I mean in other words, all he's saying is maybe it should be remanded because, wow, Mr. Brill is really betting h.is license forever.

I mean, you know, maybe it ought to be remanded because he's saying, I'm giving you the deed to my house.

MR. SPLITT: Yes, but I think there's other, I think there's other considerations here, and that is the volunteers that serve on the Hearing Panels.

This smacks a little of the Gerald Chapman case in which Mr. Chapman participated kind of marginally throughout things and then finally went up to the Supreme Court and said, "Well, I have a defense here and you should have let me put on evidence," and the Supreme Court said, "We're not going to, at this late time, send this case back and put a burden on the dedicated volunteers that serve on the Hearing Board to allow you to do something that you should have done."

Now certainly, it's enticing on a certain level to give Mr. Brill enough rope to hang himself, but there is other, there is other considerations here.

And the Hearing Board, after -- this was never produced until Gloria Golden is examined, cross-examined, excused, gone home, the Administrator's rested. It would set a very bad

....

Mr. Beggs, you have ten minutes.

REBUTTAL ORAL ARGUMENT

BY MR. BEGGS:

Mr. Katz's point about betting the farm is a matter that was discussed.

And I would be inclined to agree with you, I don't know what circumstances might develop further as a result of any hearing.

PANEL MEMBER KATZ: I didn't question. I was only trying to clarify a point of Mr. Quinn's.

I wasn't telling you how, I didn't mean it to imply that I necessarily agreed with that position.

MR. BEGGS: But I do mean to respond that we recognize how serious the matter is and how the vicissitudes of litigation go.

We've all been before judges who we may, to this day, never understand. So, those risks do exist.

In looking into the truth of this document, we know that's true. I can't explain to you what the trial situation was. I can't -

PANEL MEMBER KATZ: Would you --

MR. BEGGS: -- explain to you the number of circumstances.

PANEL MEMBER KATZ: You're implying that Mr. Brill didn't have the assistance of competent counsel, aren't you?

MR. BEGGS: You know, I don't know. I don't know.

I think we all practice law a little differently, each one of us. And I can't speak for one decision or another.

PANEL MEMBER KATZ: Well, so I gather at least you're not raising for the first time that Mr. Brill was denied some sort of procedural due process because of the ineffectiveness of counsel, is that correct?

MR. BEGGS: Uhm, I have -- I didn't mean to suggest that. If it sounded like I was, I'm not.

All I'm saying is I don't know why those decisions were made. But I want to go to something that my colleague emphasizes.

He said, "I believe," if I quote him correctly, "I believe this document is false." I emphasize that's what he says he believes.

I believe it's true. But we haven't tested it. We haven't gone back to see. And we have a document in front of us that we ought to look at.

If it's true, the charge falls. And I think that should be investigated. And he said, was there an abuse of discretion? You know, I don't challenge Mr. Rolowick.

I've been in situations myself where I felt documents were not produced, and I have asked. And at times I have succeeded, and at times I have lost on the proposition that it should have been produced.

I think the Chairman should have looked at these documents that he was ruling on when he said, "I'm not going to take any copies of anything that wasn't produced to the Administrator," and I think he should have decided whether the importance of the document was sufficient to investigate it.

Well, he had, he had opportunities. He could have granted a recess, he could have postponed the hearing to another day.

He, he could have said, "Mr. Brill, you brought these at the last minute. If we're.........

STATE OF ILLINOIS)
) SS:
COUNTY OF C00K)

GINA ANN ZDEB, Notary Public for the State of Illinois doing business in the City of Chicago; and that she transcribed, through the use of machine shorthand, via computer, the tape-recorded proceedings of said hearing and reduced said tape-recording to transcript form only those portions of said recording which were audible, and indicating inaudible where appropriate, and that the foregoing is a true and correct transcript of the audible tape-recorded portions of proceedings so taken as aforesaid, and contains the proceedings given at said hearing.

/s/GINA ZDEB

SUBSCRIBED AND SWORN TO
before me this 15 day of March 2007

/s/ Notary Public

BEFORE THE REVIEW BOARD OF THE ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION

IN THE MATTER OF:)
KEVIN MICHAEL BRILL,) No. 04 CH 79
Respondent-Appellant,)
No. 6182552.)

ORAL ARGUMENT REPORT OF PROCEEDINGS

had in the above-entitled matter before a Panel of,the Review Board of the Attorney Registration and Disciplinary Commission, at Suits 1100, One Prudential Plaza, Chicago, Illinois, on Friday, November 3, 2006, commencing at the hour of 9:30 o'clock a.m.

PRESENT:
MR. THOMAS A. ZIMMERMAN, JR., Chairman,
MR. DANIEL P. DUFFY,
MR. WILLIAM R. QUINLAN (Not Present),

Review Board Members;

MR. STEVEN R. SPLITT, ESQ., and
MS. ROSALYN B. KAPLAN, ESQ.,
appeared on behalf of the
Administrator-Appellee;

MR. GREGORY B. BEGGS, ESQ.,
appeared on behalf of the
Respondent-Appellant

CHAIRMAN ZIMMERMAN: Good morning.

MR. SPLITT: Good morning.

MR. BEGGS: Good morning.

CHAIRMAN ZIMMERMAN: Please.

This is the matter of Kevin Michael Brill, 04 CH 79.

William Quinlan cannot make it today, so he will review the tape of the oral argument.

We have 20, 20 and 10, the time for oral.

The Respondent is the Appellant, so anytime you're ready.

ORAL ARGUMENT

BY MR. BEGGS:

If it please the Board, my name is Gregory Beggs. I'm the attorney for Mr. Brill in this case and in the previous two cases, which I will refer to as Brill 1 and Brill 2,and Brill 3.

And there have been several other proceedings, too. There was a case out in DuPage County, and I'll try to be clear when I refer to that. And there was a bankruptcy proceeding over at Michigan, and I'll try to be clear when I refer to that.

I looked at my diary for 2002 and I found what I expected to find, that, on November 8th, I stood at this same podium and argued Brill 1; and the issue there was whether to ask the Hearing Board to review these two promissory notes that are the focus of our hearing this morning. And, by the way, I brought them along. We still have them in our file. And the record has several copies of these; otherwise, I would pass them on over.

And I remember asking the Hearing Board, the gentleman who was sitting in your seat, Mr. Duffy -- he said, well, are you willing to bet the whole farm on whether those are genuine notes? And I said yes. And that's what we were arguing about, whether to send the matter back to the Hearing Board to consider the validity of these two notes that we're now arguing about this morning.

I would -- it's about -- I guess I began a couple of minutes ago, 9:32. I would like to reserve 10 minutes for my rebuttal, you please.

CHAIRMAN ZIMMERMAN: You'd have twenty minutes now and then an additional ten.

MR. BEGGS: Thank you. Thank you.

I don't know whether we'll take it all, but I want to reserve the time.

There hasn't been any secrecy about these notes. Respondent tried to introduce them at the Hearing Board on October 2, 2001, and there's an argument about whether they were in the group of papers that he had in his hands.

But Mr. Brill testified that he had them, but the Chairman at that time ruled that they were inadmissible because he said they hadn't been produced during the discovery that took place after the complaint was filed.

Mr. Brill said that he had given all of his documents to Mr. Cesario, who is the ARDC investigating officer. 'And I would point out that we have nagged for years about seeing Mr. Cesario and we haven't seen him, although he is still listed in Sullivan's as an attorney here who works for the ARDC.

Now, the Hearing Board I want to point out did refer --

MR. DUFFY: Can I stop you just for a second?

MR. BEGGS: Yes.

MR. DUFFY: You're -- are you arguing that you had -- there was some inability to call Mr. Cesario as a witness in the underlying proceedings here?

MR. BEGGS: I'm saying that Mr. Cesario was available to testify after he said -- after Mr. Brill said that he had given all of his documents including these notes to Mr. Cesario and they weren't copied. And Mr. Cesario didn't appear.

So the inference is that, if he was available, his testimony would have been adverse to the ARDC. He was available. He was here. He's still here. He never appeared.

MR. DUFFY: So you're arguing some sort of adverse -- adverse inference -?

MR. BEGGS: Yes.

MR. DUFFY: -- instruction type -

MR. BEGGS: Yes, I am.

MR. DUFFY: -- allegory?

MR. BEGGS: That's correct.

What I intend to do is I want to go over the facts in some detail if I can, and then I want to deal with the jurisdictional issue that we have argued all along about a motion to dismiss on -- based on that. That motion was denied.

But the Bankruptcy Court had exclusive jurisdiction, and I want to get to that. And I also want to cover the res judicata issue that the matter could have been decided, the validity of these notes, in the first proceeding; and it never was.

We asked -- we asked not only the Review Board but we asked the Supreme Court. And we put the notes in front of both bodies, and we. were denied the ability to test the notes at that time.

And our position is that the case at that time could have tried, the notes were involved in that case, and they weren't. And that should be the end of it. That's res judicata.

And so this proceeding shouldn't be -- shouldn't ever have been held. And we brought a motion to that effect also, and that was denied.

And then after the res judicata issue --

MR. DUFFY: Can I ask a question for clarification?

MR. BEGGS: Sure.

MR. DUFFY: Are you arguing that, because the notes were in issue before and nothing was decided concerning the notes, that there's an inability to make -- to decide that they're false now or to contest their authenticity now?

MR. BEGGS: Yes.

MR. DUFFY: Okay. As opposed to the other argument that -- I should say, or are you arguing that the authenticity of the promissory notes has been conclusively established at some -- in some other venue?

MR. BEGGS: So far as the res judicata point is concerned, I'm saying that the authenticity of those notes was in issue at that time with the same parties and the same points involved, whether the notes were valid, and they were not tested.

MR. DUFFY: So this was the 2002 proceeding you're referring to?

MR. BEGGS: Yes. Yes, I am. The 2002 proceeding. First of all, it could have been accepted by the Chairman. And we argued at that point that that was a wrong ruling, that he shouldn't have foreclosed Mr. Brill from bringing documents that had been produced two years earlier to the ARDC.

But when they were ruled inadmissible, the whole bunch of documents that he had in his hand and which I asked the Review Board to send back, the proceeding was still pending. And I challenged the Review Board to test the validity of these notes by sending them back to the Hearing Board.

MR. DUFFY: Was there an offer of proof made as far as the documents that were -?

MR. BEGGS: No. An offer of proof was not made by the trial lawyer at that time.

MR. DUFFY: So the documents never made it into the record then?

MR. BEGGS: The documents are referred.............

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

JO ANN MESSINA-EGAN hereby certifies that she is the Certified Shorthand Reporter who transcribed the proceedings in the above-entitled matter from a cassette tape.

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